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# **SECOND REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN**

**1977**

TABLED IN THE LEGISLATIVE ASSEMBLY BY  
THE CHAIRMAN OF THE COMMITTEE  
JAMES A. RENWICK, Q.C., M.P.P.

4th Session 30th Legislature

26 Elizabeth II







March 28, 1977.

TO:

THE HONOURABLE RUSSELL D. ROWE  
Speaker of the Legislative Assembly of the  
Province of Ontario

*Select Committee on the Ombudsman*  
3

Sir,

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on Thursday July 15, 1976 to review from time to time the reports on the Ombudsman in accordance with the terms of reference established, have the honour to submit the attached second report.

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Riverdale  
Chairman

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MICHAEL N. DAVISON M.P.P.  
Hamilton Centre

*Michael N. Davison*

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*Gill Sandeman*







MEMBERS OF THE SELECT COMMITTEE  
ON THE  
OMBUDSMAN

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MICHAEL N. DAVISON, M.P.P.	Hamilton Centre
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JOHN P. BELL	Counsel to the Committee
ALEX McFEDRIES	Clerk of the Committee





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## INTRODUCTION

On Thursday, July 15, 1976, on motion by Mr. Davis, seconded by Mr. Lewis, it was ordered,

"That, a Select Committee of this House be appointed to review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate; reports and recommendations of the Committee to be placed on the Order Paper for discussion after presentation.

And that the Select Committee have authority to sit during recesses and the interval between Sessions and have power to employ such staff as it deems necessary to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel the attendance before the said Select Committee of such persons and the production of such papers and things as the Committee may deem necessary for any of its proceedings and deliberations for which the Honourable the Speaker may issue his warrant or warrants."

On Thursday, December 16, 1976 on motion by Mr. Welch, seconded by Mr. Renwick, the Legislative Assembly ordered,

"That the terms of reference of the Select Committee





appointed on July 15th, 1976 to review from time to time the reports of the Ombudsman as they become available, be amended to give the Committee authority to formulate from time to time, as the Committee deems necessary, pursuant to Section 16(1) of The Ombudsman Act, 1975, general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act."

The Committee, through its Chairman on December 22, 1976, wrote to all M.P.P.s requesting that they each provide the Committee with their comments and observations on the role and operation of the Office of the Ombudsman. The Committee received responses from the following M.P.P.s: The Honourable Arthur Meen, Q.C., The Honourable William G. Newman, The Honourable John P. MacBeth, Q.C., The Honourable Sidney Handleman, The Honourable Dr. Harry Parrott, Mr. Douglas Moffatt, Mr. Osie Villeneuve, Mr. John Eakins, Mr. Mike Breaugh, Mr. Bernard Newman, Mr. Edward Good, Mr. Edward Sargent, Mr. James Bullbrook, Q.C., Ms. Evelyn Gigantes, Mr. Paul Yakabuski, and Mr. Earl McEwan. At the invitation of the Committee, Mr. Bullbrook, Ms. Gigantes, Mr. Yakabuski and Mr. McEwan appeared before it.

On Monday, January 10, 1977, the Ombudsman submitted to The Speaker of the Legislative Assembly, pursuant to Section 12 of The Ombudsman Act, 1975, his First Annual Report for the period May 22, 1975 to October 31, 1976.

On Monday, January 17th and Tuesday, January 18th 1977, the Committee held organizational meetings in camera, with



the Ombudsman, and defined the scope of its inquiry with respect to the issues raised in the First Annual Report and with respect to any other issues which the Committee considered necessary to consider, having regard to its amended Order of Reference.

The Committee thereafter met for 15 sessions commencing on the afternoon of January 18, 1977 to March 22, 1977.

The foregoing second report deals with matters which the Committee has considered and reviewed during those sessions. The report also contains such recommendations as the Committee has deemed appropriate in the circumstances. For convenience the recommendations are numbered where they appear in the text of the report and are summarized in Schedule "A" to this report.





## PART I

### NORTH PICKERING PROJECT INQUIRIES

The Ombudsman, in Appendix "B" of his report (pages 571-577), briefly summarized the status of the complaints of the North Pickering Project former landowners as of the 10th of January, 1977. The events leading up to the selection and the appointment of the two vehicles of inquiry are more fully set out and described in Part 4 of this Committee's First Report (pages 5 through 12 inclusive).

The Commission of Inquiry was appointed under Order-In-Council 2959/76 as amended by Order-In-Council 3545/76. Order-In-Council 2959/76 provides that "all matters referred to this Commission shall be heard and determined in proceedings of an adversarial nature". The agreement reached between the Ombudsman and the Minister of Housing on the 1st of October, 1976 which was concurred in by this Committee, contains the following sentence, "In view of the fact that under this solution the merits of all the cases will be determined by proceedings of an adversarial nature, it is understood that the Motion presently before the Divisional Court will be discontinued by the Applicants".

The meaning and application of the term "adversarial nature" has caused all parties to the Commission of Inquiry and their counsel to become involved in a series of legal arguments before the Commission of Inquiry with respect to the admissibility of certain evidence and the nature of the proceedings. As a result of certain rulings by the Commission of Inquiry respecting the admissibility of different classes of evidence, counsel for the





former landowners whose cases are before the Commission of Inquiry, persuaded the Commissioners to state a case to the Divisional Court of the High Court of Justice of Ontario. The Commissioners stated a case to the Divisional Court on the 31st of January, 1977.

The stated case was heard by the Divisional Court on the 10th of February, 1977. The Court decided, in effect, that the Commission should receive in evidence any evidence which any one of the Commissioners regards as admissible and relevant to the matters to be considered. The Committee understands the effect of this ruling to be that each of the three Commissioners may recommend and report on relevant matters which he considers to be in accordance with his own best judgment and conscience. In other words, the Commission of Inquiry might submit from one to three different reports with recommendations as a result of its proceedings.

Subsequent to the rulings by the Divisional Court, counsel representing the five land acquisition agents was granted Leave to Appeal by the Ontario Court of Appeal. This has postponed the Commission's hearings indefinitely until the issues raised in the appeal have ultimately been decided. The Court of Appeal of Ontario heard the appeal by the land acquisition agents on March 14 and 15, 1977. As of the date of the Report the Court of Appeal has not handed down its decision.

The Ombudsman, because of his desire to find a solution to the dilemma of increasingly complex legal problems and apparent inevitable delay, was prompted to reach an agreement with the Minister of Housing on October 1, 1976. These legal



problems and delays are now even more apparent and critical. This delay is of great concern to the Committee.

The Committee is further concerned that the series of events which have transpired since the "agreement" was reached between the Ombudsman and the Minister of Housing on October 1, 1976, have made it improbable that the terms of reference agreed between the Minister of Housing and the Ombudsman and the issues adopted by this Select Committee in its proceedings will be fully investigated, examined and thoroughly reported upon.

This Committee is deeply concerned that the rights of all parties to the Commission of Inquiry will be seriously affected by this further delay. Additionally, the likelihood that the Commission of Inquiry will be unable to reach a consensus on all of the relevant issues of inquiry is considered by this Committee to be a further potential source of delay.

The Committee is of the opinion that the root of all of the difficulties which have arisen since October 1, 1976 is the ambiguity of the term "adversarial nature" which arises by a comparison of the wording of the agreement reached between the Ombudsman and the Ministry of Housing dated October 1, 1976 and the Order-In-Council 2959/76 (see Schedule "B" to this Report). The Committee is of the opinion that the phrase "adversarial nature" contained both in the agreement of October 1, 1976 and in the Order-In-Council is merely descriptive of the nature of proceedings under The Public Inquiries Act. It was not intended by this Select Committee that that phrase would





in any way be interpreted so as to any way limit or restrict a full and exhaustive investigation of all relevant issues.

This Committee therefore recommends that The Legislative Assembly request that the Order-In-Council again be amended to remove any ambiguity as to the meaning of "adversarial nature" and so as to give effect to the agreement reached on October 1, 1976 as intended by this Select Committee, by removing the sentence "All matters referred to this Commission shall be heard and determined in proceedings of an adversarial nature." from Order-In-Council, OC 2959/76. <sup>1</sup> \* See dissenting opinion of Larry Grossman, M.P.P., Schedule "G".

## PART II

### FIRST ANNUAL REPORT OF THE OMBUDSMAN, 1975-1976

The Committee considered the Ombudsman's First Annual Report ("Report"), under a number of areas such as:

- (A) Specific recommendations and observations made by the Ombudsman respecting one or a group of governmental organizations wherein recurring matters of concern were perceived by him;
- (B) A selection of specific case summaries wherein the Committee considered that certain issues raised by the particular complaint required a more detailed review;
- (C) The general operation of the office of the Ombudsman including an examination of the procedures used by the Ombudsman and his office, within the period referenced in the Annual Report, in carrying out the Ombudsman's



various functions under The Ombudsman Act, 1975 and an examination of how the various statutory requirements were met.

Within the period referenced by the Report over 14,000 persons approached the Ombudsman's office in some way with either or both of an inquiry or a complaint. Of that figure, 7,176 were classified as complaints and were investigated or acted upon in some fashion by the Ombudsman and his office. Of the 7,176 complaints, 5,330 were closed or disposed of by the Ombudsman's office within the period referenced by the Report as a result, in whole or in part, of the actions of the Ombudsman and his staff. During this same period the Ombudsman was also involved with the formation and organization of his office; with province-wide tours for the purpose of "spreading the word" of the Ombudsman and making the presence of his office felt in every part of the province; and with a study of every significant Ombudsman office in the world. That the Ombudsman and his staff were able to accomplish all that is referenced in the Report is a testimony to the effort, dedication and enthusiasm of the Ombudsman and each and every member of his staff. In a relatively short period of time the Ombudsman has created and oversees an operation performing Ombudsman functions unequalled in substance and in volume in the world. The effect of the presence of this office has already had a significant influence on government, members of the Legislative Assembly, and the people of the Province of Ontario.

The Committee wishes at this time to affirm its





support for the concept of the office of the Ombudsman in Ontario. The Committee recognizes the significant contribution that the Ombudsman has and will continue to make by serving the people of Ontario in matters where they consider themselves to be adversely affected by government or its agencies. The comments and observations of the Committee in this Report are intended to assist the Ombudsman in the performance of his functions in the future so that difficulties and obstacles encountered by him during the existing evolutionary phase of his office, may be avoided, and that the process of his office and the functions which he must perform will not be delayed or frustrated.

With certain notable exceptions found later in this Report, the Committee has postponed any detailed consideration of matters relating to the Ministry of Correctional Services and of matters relating to any amendments to The Ombudsman Act. In both of these areas the Ombudsman has informed the Committee that special reports will be forthcoming from his office and available for the Committee to consider this spring. Therefore, to the extent that the First Annual Report deals with these areas, the work of the Committee has not yet been completed. The Committee notes in particular that the Ombudsman hoped his "Blueprint" on the organization and operation of his office would be available by the end of March, 1977. The Committee urges the Ombudsman to finalize these reports as soon as possible so that the Committee can complete its consideration of these areas and make whatever recommendations it feels are appropriate and necessary in the circumstances.



(A) WORKMEN'S COMPENSATION BOARD

The Ombudsman made observations and recommendations in his Report with respect to certain procedures of the Workmen's Compensation Board and the relationship of a claimant to the Board in the context of those procedures. The Ombudsman recommended that:

- (i) the Workmen's Compensation Board improve its methods of informing claimants of the available Board appeal procedures;
- (ii) the Workmen's Compensation Board simplify its appeal procedures so as to alleviate any confusion and complexities which he perceives now exist;
- (iii) the Workmen's Compensation Board establish a procedure that would allow claimants to be represented by legal counsel during the appeal process, who would be available to the claimants from a duty counsel type of roster, and whose legal fees would be paid by the Workmen's Compensation Board.

The Committee heard from members of the Ombudsman's office responsible for Workmen's Compensation Board complaints on the subjects of these recommendations; the working relationship that exists between the Ombudsman's office and the Workmen's Compensation Board; and the internal procedures employed by the Ombudsman's office in respect to the investigation and resolution of Workmen's Compensation Board complaints. The Ombudsman's staff



provided the Committee with samples of files as representative of the matters referenced in the Ombudsman's recommendation and as representative of both the working relationship with the Board and the internal procedures employed by the Ombudsman's office.

The Committee also heard from representatives of the Workmen's Compensation Board most familiar with the appeal process including the Vice-Chairman of Appeals, who provided the Committee with an excellent and informative description and explanation of the Board's appeal procedures. This paper is annexed to this Report as Schedule "C" for the advice and assistance of members of the Legislature. This document is the most complete description and explanation of the Board's current appeal process that has ever been presented to a Committee of the Legislature.

The Vice-Chairman informed the Committee that all of the written information respecting the Board's appeal process and its procedures that is distributed to the public consists of four (4) paragraphs found on page 4 and 5 of the Board's booklet entitled "Claims Information for Employees + Employers", a one page pamphlet entitled "Information About The Appeals Procedure", and five (5) short paragraphs on the back of the Board's Form H1 under the heading "Information About Decisions". This written information, with the exception of that contained in the information booklet, is only available in English. The information is general in nature and does not approach the particularity and detail of that of Mr. Reed's description and explanation (Schedule "C"). The Vice-Chairman informed the Committee that claimants would be verbally informed of the appeal





procedures in more detail if they made requests of the appropriate Board officials.

It was apparent to the Committee in the material presented by the Ombudsman's office that, for whatever reasons, claimants were unaware of the nature of the appeal process and the procedures required of them within that process. Generally claimants have limited personal access to Board files to assist them in both the preparation and presentation of an appeal.

The Committee is of the opinion that the Board should immediately take steps to improve the nature and extent of information made available to claimants in respect of the appeal process. Specifically, the Board's pamphlets entitled "Information About The Appeals Procedure" should be in the same five (5) languages as the "Claims Information" booklet. The Committee recommends that the Legislature require the Workmen's Compensation Board to undertake this change forthwith.<sup>2</sup>

The Workmen's Compensation Board has considered two suggestions made by the Select Committee that the H1 form letter sent to injured employees be re-worded to make it less formal in tone and that employers should be asked hereafter to indicate on accident reports a specific language, other than English, spoken by the injured persons. The Board has informed the Committee that both of these suggestions have been accepted and will be included in the next printing of the employers' report of accident or industrial disease Form 7 and the H1 letter sent to injured employees. The Committee commends the Board for taking this step quickly to alleviate some of its concern with



respect to the language issue.

The Committee is also of the opinion that the Board should provide claimants with more detail respecting the appeal process and the necessary procedures than are available in the three (3) written items referenced above. To rely upon a claimant's inquiries of Board representatives as the additional means of disseminating information respecting appeals is not in the Committee's opinion sufficient. Therefore, this Committee recommends that the Legislature require the Workmen's Compensation Board to prepare a separate booklet or information circular, in the same five languages, to be forwarded to all claimants along with the form H1 letter. The Committee recommends that this booklet contain a description of the appeal process and the procedures required thereby based on the document tabled with the Committee by the Vice-Chairman of Appeals and identified as Schedule "C" to this Report. <sup>3</sup> The booklet should also contain a very clear and obvious statement that if the claimant does not understand any matter of the process or the procedures described, he or she should communicate with identified individuals within the Workmen's Compensation Board. <sup>4</sup>

The Committee is concerned that a claimant may be placed at a disadvantage by representing himself personally at an appeal with the Board's present policy of not disclosing its entire file to that claimant. The Committee recognizes the Workmen's Compensation Board's concern in the matter of confidentiality. The Committee, however, is unable to reconcile the Board's practice of disclosing Board files to representatives of a claimant in certain circumstances but not to the claimant





personally. Therefore, this Committee recommends that the Workmen's Compensation Board review its policy in this regard with a view to amending it to give effect to a policy of complete and full disclosure of the Board's file to the claimant.

The Committee was informed by the Vice-Chairman of Appeals that there is, at the present time, a study group underway within the Board which is considering the entire appeal process including the matter of complexity of the Board's existing procedures. That study group will be reporting its findings and recommendations to the Vice-Chairman and to the Board of Commissioners shortly. The Committee and the Ombudsman's office agreed that it would serve no useful purpose for the Committee to make, at this time, any detailed findings and recommendations concerning those appeal procedures before the Board has completed its internal study and had an opportunity to implement all appropriate recommendations in connection therewith.

The Committee notes that both the Ombudsman's office and the Workmen's Compensation Board are concerned about the complexity of the Board's procedures. The Committee shares their concern and urges the Board to complete its study as soon as possible and take whatever steps are appropriate to implement any necessary changes.

The Committee recommends that the Ombudsman in his next or subsequent reports address himself to this issue of Board procedures and at that time or times provide the Committee with more detailed findings and examples of the complexities within the Board's procedures which, from the continuing experience



of his office, are considered to be causing confusion in the minds of claimants.<sup>6</sup> The Committee accordingly defers any further consideration of and comment on this issue pending the receipt and consideration of those reports.

The working relationship that exists between the office of the Ombudsman and the Workmen's Compensation Board has evolved slowly within the period referenced by the Report. The Ombudsman's staff informed the Committee that both offices were still trying to work out a satisfactory process of co-operation when complaints were being investigated or otherwise dealt with by the Ombudsman and his staff. To some extent frustrations are being felt by the Ombudsman's staff by reason of their perceived inability to come to grips with a proper working relationship with the Workmen's Compensation Board.

The Committee is concerned that the working relationship which presently exists between the Ombudsman and the Workmen's Compensation Board may, in some part, be contributing to the backlog of cases the Ombudsman's office presently has with respect to Workmen's Compensation Board complaints and to the lengthy process of investigation and resolution that is apparent from the Report with respect to this type of complaint. Accordingly, the Committee recommends that both the Ombudsman and the appropriate Workmen's Compensation Board Commissioners immediately commence discussions for the purpose of arriving at a mutually satisfactory working relationship.<sup>7</sup> The Committee further recommends that the Ombudsman report in his next report to the Committee the status of that working relationship and any



improvements his office has noted with respect to its ability to process Workmen's Compensation Board complaints.<sup>8</sup>

Section 74 of The Workmen's Compensation Act gives the Board exclusive jurisdiction over all matters relating to its appeal process. Because of its unique status as an independent body it has naturally raised some question as to the Ombudsman's authority to question Commissioners of the Board who have presided on appeals and have participated in Board decisions. The Board has taken the position that the Ombudsman may not have the authority during the course of an investigation, or at any time, to question Board Commissioners, Appeals Administrators and operating staff as to the reasons for their decision or the reasons for their professional opinions. The Committee understands the basis for this position to be that the Board believes itself to be a quasi-judicial body and that Commissioners are accordingly carrying out quasi-judicial functions in the appeal process and that the Ombudsman cannot question such a quasi-judicial body individually or collectively about the reasons decisions were reached. The Committee was further informed by Board officials that an opinion on this issue of the Ombudsman's authority has been requested from the Attorney-General. The Board received a legal opinion from the Ministry of the Attorney-General dated March 3, 1977, the effect of which the Committee interprets as confirming the Ombudsman's authority under The Ombudsman Act, 1975 to question the Board Commissioners, Appeals Administrators and operating staff as to the reasons for their decision or the reasons for their professional opinion.

The Committee therefore recommends that hereafter





the Board make available to the Ombudsman's office all appropriate Commissioners, Appeals Administrators and operating staff for the purpose of providing information relating to any matter that is being investigated by the Ombudsman. <sup>9</sup>

The ultimate question here is the extent to which the Legislation does or ought to invite the Ombudsman to substitute his opinion for that of the Workmen's Compensation Board on the merits of each individual case. The Committee in the course of its deliberations on questions related to the Board, felt it was adviseable to bring this question to the attention of the Assembly.

With respect to the third recommendation of the Ombudsman, the Ombudsman's underlying principle of this recommendation was that claimants be provided with adequate guidance and assistance as they go through the Board's appeal process. All representatives of the Board appearing before the Committee were unanimous in their opposition to this recommendation. They firmly believe that if implemented it would essentially defeat the function of the Board's process and turn it into one which is adversarial. The Ombudsman's office was not able to provide the Committee with any specific examples of cases wherein the claimant suffered as a result of not being represented by legal counsel.

The Committee is of the opinion that it is not appropriate at this time to make any comments or recommendations about this matter. The Ombudsman, however, is urged to reference again his recommendation in his next report with all appropriate analyses and details of complaints made to his office wherein this issue is perceived to be present and material to



the substance of the complaint.

(A) 2. ADMINISTRATION OF JUSTICE

At page 18 of his Report, the Ombudsman states:

"As a former practising criminal lawyer, I am naturally disturbed that almost 70 per cent of all complaints against Ontario government ministries involved the province's justice system. I detect an unawareness on the part of the public as to the procedures they should follow in asserting their grievances against the operation of the courts, or against lawyers or judges.

Until the public becomes better informed as to its rights to lodge complaints with the Law Society regarding lawyers, or the Judicial Council, which deals with complaints against judges, or to the Ministry of the Attorney-General, which is responsible for the functions of the courts, the Ombudsman's office will continue to refer such complaints to the appropriate agency".

The Ombudsman informed the Committee that although he perceived the matter of the public's unawareness of the means of asserting their grievances in this area, he was unable to offer any acceptable solution to the problem other than a continued commitment by his office to continue to direct people to the appropriate place where their complaint can be lodged. The Ombudsman further advised that a detailed review of this





issue by the Committee would be best reserved until his next semi-annual or annual report. He would thus be afforded an opportunity to assess the extent to which his office has been effective in informing the public of the available procedures and to what extent the concerns referenced in his observations have been relieved.

The Committee agrees with the Ombudsman's suggestion in this regard. It commends him for his efforts in this area; for the general advice his office has given to persons with this type of grievance and for the excellent working relationship he and his staff have developed with those comprising the Administration of Justice area most notably, the Ministry of the Attorney-General, the Ministry of the Solicitor General, and The Law Society of Upper Canada.

The relationship is one of mutual respect for the functions, responsibilities and authorities of the other wherein a number of complaints received by the Ombudsman have been resolved on a relatively informal, functional and expeditious basis. The Ombudsman has, with this working relationship, been able to assist in the resolution of matters of concern to members of the public by conducting discussions with senior officials of both ministries involved regardless of the Ombudsman's jurisdiction over the subject matter of the complaint. This working relationship is welcomed by both ministries who perceive the Ombudsman's function as including a means of keeping them informed on areas wherein the justice system has caused injustice to members of the public. This working relationship is a model for other



governmental organizations to work towards with the Ombudsman's office as one wherein a great number of complaints may be resolved to the satisfaction of all concerned with a minimum of disruption and time.

The Committee is not advocating that the Ombudsman or his office relax its procedures in complying with statutory requirements of The Ombudsman Act with respect to any one of the Ombudsman's functions. The Committee expects, in all appropriate cases, that these procedures will be carried out. However, in cases where a more formal approach of investigation etc. is required, the process will be more effective and efficient resting on a foundation of this type of working relationship and mutual respect.

The Committee notes that most of the complaints received by the Ombudsman in the area of Administration of Justice are, by definition, beyond his jurisdiction. However, one area wherein the Ombudsman has jurisdiction, in whole or in part, is with respect to the matter of complaints by the public as to the conduct of police officers. The Ombudsman considers he has jurisdiction respecting complaints against Ontario Provincial Police Officers after the Ontario Police Commission has considered and dealt with a given complaint. The Ombudsman has decided that he does not have original jurisdiction over police officers individually before the available complaint process has been exhausted.

However, there is no equivalent complaint procedure with respect to municipal police forces and the officers working



thereunder. There are divergent opinions as to whether the Ombudsman's office has any jurisdiction in respect of complaints against municipal police officers in the absence of any complaint procedures in The Police Act. As a result, uncertainty exists in the minds of the public with respect to what, if any, means are available to it to lodge complaints respecting conduct of municipal police officers.

The Deputy Solicitor General informed the Committee that the Ontario Police Commission has developed and distributed to all municipal police forces guidelines for the development of uniform complaint procedures. The Committee also understands that the Ontario Police Commission has requested that the municipal police forces implement these guidelines in the interests of consistency and uniformity. The implementation of these guidelines throughout the province would alleviate much of the uncertainty which exists in the minds of the public.

The Deputy Solicitor General further informed the Committee that his Ministry expects to table legislation in the Legislature this spring which will provide for uniform complaint procedures throughout the province in respect of all police forces, which legislation, it is expected, will serve to alleviate the confusion now present. The Committee expects further that this legislation will serve to crystallize the nature and extent of the Ombudsman's jurisdiction with respect to complaints against police conduct.

In the circumstances, the Committee reserves making any recommendations on this issue until the legislation is





tabled and passed by the House and until the Ombudsman has had an opportunity of assessing its effectiveness in respect of his functions. The Committee recommends that the Ombudsman address himself to the observation quoted earlier in his next or subsequent reports in light of any new legislation passed and the subsequent experience of his office. <sup>10</sup>

(B) CASE SUMMARIES

The Committee considered, with the assistance of the Ombudsman's office and the particular governmental organizations concerned, those cases summarized in Chapter 8 of the Report wherein the Committee decided a more detailed examination was required. Wherever appropriate, the Committee has made recommendations respecting practices and procedures within the given governmental organization which it believes has given rise to the particular complaint or the matter of continuing concern. Additionally, the Committee has noted those instances wherein the particular governmental organization has complied with certain requests and suggestions of either or both of the Ombudsman and the Select Committee.

1. Ministry of the Attorney-General

(i) Complaint #8 at page 374 of the Report, highlights problems that arise as a result of the period of time which elapses between the payment of outstanding traffic or related fines and the reinstatement of a driver's licence in consequence of the payment of those fines. The then Deputy Attorney-General advised the Committee that the present operation for the



collection of these fines and reinstatement of licences is strictly manual and lacks any centralization. The payment of fines, at the present time, is permitted at 160 offices across the province with no centralization. The Deputy Minister further advised that he favours an integrated and centralized system dealing with licence suspension and payment of fines.

The Committee commends the efforts of the Ministry of the Attorney-General in propounding and enacting a scheme whereby the receipt by the province in excess of \$3,000,000 of unpaid fines has been achieved. However, as the Ministry recognizes and concedes, at present an inordinate period of delay is experienced by a person in obtaining a reinstatement of the licence after the fines have been paid. This, in the Committee's opinion, is tantamount to a penalty in addition to the original suspension of the driving licence. Accordingly, the Committee recommends that the Legislative Assembly require the Ministry of the Attorney-General in concert with the Ministry of Transportation and Communications to effect a centralized scheme, using the computer resources of the Ministry of Transportation and Communications, whereby licences that have been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines. <sup>11</sup>

(ii) Complaint #12 at page 378 of the Report, deals with the absence of a centralized system in the Provincial Court Offices in Ontario for the receipt and payment of fines by any Provincial Court Office in respect of a conviction by any other Provincial Court in the province.



The Deputy Attorney-General in this case issued an "extraordinary directive" to the Office of the Provincial Court in Toronto requiring that office to accept payment of a fine for a conviction which had taken place at a Provincial Court in another jurisdiction in Ontario, to issue a receipt therefor the effect of which permitted the convicted person to avoid incarceration for the period of time specified in default of payment.

The Committee is of the opinion that this is an area wherein a centralized system for the payment of fines would avoid, in the future, the possibility of a person being unnecessarily incarcerated solely for the reason that he or she was physically unable to pay the fine, within the time required, at the Provincial Court Office in the jurisdiction where the conviction was issued. The Committee therefore recommends that the Ministry of the Attorney-General develop a centralized scheme for the payment of fines throughout Ontario with the aid and assistance of whatever computer resources are considered appropriate and necessary in the circumstances.<sup>12</sup>

## 2. Ministry of Correctional Services

(i) Complaint #37 at page 412 of the Report, deals with the issue of the computation of a person's sentence who has been convicted of the offence of being unlawfully at large. The Ombudsman's office reported at page 413 of the Report that as a result of their investigation, the Ministry of Correctional Services changed its policy regarding the computation of escape sentences and now provides that the sentence will be concurrent





to the sentence being served prior to the escape, wherein a Judge so orders in his decision.

The Deputy Minister of Correctional Services informed the Committee that such a change in policy had not, in fact, been adopted and that the disposition of this particular complaint should not be considered as a benchmark of new policy. The Ministry's position at present is that where a Judge provides that a sentence on a conviction for being unlawfully at large is to be concurrent, notwithstanding the provisions of Section 137 of The Criminal Code, the Ministry will seek the advice of the appropriate Crown Attorney's office in respect of the matter of an appeal from that sentence. The Committee agrees with the position of the Ministry in this case as the only possible one to remain consistent with and to comply with the provisions of Section 137 of The Criminal Code. Accordingly, the Committee does not believe it appropriate to make any further observations or recommendations in connection with this complaint.

(ii) Complaint #41 at page 415 of the Report, raises the issue as to the adequacy of the fire alarm devices at the Rideau Correctional Centre in Ottawa. The Committee was advised by a member of the Ombudsman's staff that after investigating the fire in question the Fire Marshal's office recommended to the Ministry that the "annunciator" in the fire alarm system be changed to indicate separately whether a fire is located in either the segregation area or the basement area. The present annunciator in the alarm only indicates that a fire is in either or both of these areas.



The Committee was informed by the Deputy Minister of Correctional Services that as a result of the Fire Marshal's recommendation, his Ministry contacted representatives within the Ministry of Government Services for the purpose of determining if the Fire Marshal's recommendations could be implemented. The Ministry of Government Services has apparently advised the Deputy Minister of Correctional Services that the equipment, as originally installed, was sufficient. The Deputy Minister advised the Committee, however, that he and his Ministry support an alteration of the annunciator in accordance with the Fire Marshal's recommendation.

The Committee is of the opinion that the equipment was unsafe and insufficient for the purpose intended. The events of the fire at this Correctional Institution, while happily resulting in no tragedy, have in this Committee's opinion highlighted a very serious defect in the fire alarm system which if not corrected might result, in the future, in more serious and tragic consequences. Subsequent to his appearance before the Committee, the Deputy Minister informed counsel to the Committee that additional equipment providing for a separate alarm and annunciator for the segregation area and basement was installed on February 11, 1977. It is therefore unnecessary to make any recommendation about this matter.

(iii) Complaint #43 at page 418 of the Report, deals with the issue of the period of time an inmate of a provincial penal institution is to be held in segregation for disruptive behaviour before the person in charge of the particular penal institution must hold a hearing into the circumstances of the disruption



and impose the appropriate penalty. The Committee was advised by the Ombudsman's office of a typographical error in the summary of the complaint wherein the period of time in which the person was held in segregation should have read a "week-end" and not a "week". The Deputy Minister informed the Committee that the inmate was locked in her own cell for the week-end and not in a segregation area.

The Committee also noted in its review of this case that there appeared to be some confusion or lack of communication by Ministry officials as to what officials of the particular institution had been delegated with the authority to hold the hearing required, in the absence of the superintendent. The Committee recognizes the Ministry's duties in some cases to segregate individuals on account of behaviour. However, the Committee recommends that a clear policy of the Ministry is required to provide for the superintendent or his appropriate designate to conduct a hearing in respect of the disruptive behaviour, as soon as possible subsequent to the actual behaviour, so that the time spent in segregation before a hearing is minimum in the circumstances. Such a hearing should be conducted within twenty-four hours of the event. Appropriate amendments should be made to the regulations under the Ministry of Correctional Services Act to provide that at all times someone is present at the institution with the authority to conduct such a hearing.<sup>13</sup> The Deputy Minister has advised, subsequent to his appearance before the Committee, that the Ministry is now reviewing segregation policy and the authority of superintendents to delegate to other senior personnel, the functions of holding misconduct



hearings.

(iv) Complaint #44 at page 418 of the Report, concerns amount of information respecting OHIP coverage that is available to the inmate population in provincial penal institutions and the method in which this information is disseminated by the Ministry. The Committee was advised by the Deputy Minister that the information booklet presently available to inmates does not contain reference to the expanded OHIP coverage, available since 1975, with respect to examination and treatment of inmates by qualified specialists. The Committee notes the undertaking by the Deputy Minister that this information will be included in the next information booklet, the printing of which is expected to be completed this spring.

The Committee recommends that the Ministry of Correctional Services be required to inform all inmates in provincial Correctional Institutions of this expanded coverage by means additional to this small booklet.<sup>14</sup> The Committee further recommends that the Ombudsman consider this matter in his next or subsequent reports and advise the Committee as to the extent to which the problem inherent in this complaint has been alleviated.<sup>15</sup>

(v) Complaint #49 at page 423 of the Report, was considered by the Committee solely for the purpose of confirming the procedures adopted by the Ministry of Correctional Services in enforcing the provisions of Section 17(2) of The Ombudsman Act respecting the confidentiality of correspondence from inmates. The Committee is satisfied that the Ministry and its officials have taken every





appropriate step to comply with this requirement. This is but an example of the excellent working relationship that exists between this Ministry and the Ombudsman's office.

Section 17(2) of The Ombudsman Act, 1975 is deficient in that it does not provide for confidentiality of communications from the Ombudsman's office to the inmate. The Committee, therefore, recommends that Section 17(2) of The Ombudsman Act be repealed and the following substituted therefore:

"Notwithstanding any provision in any Act, when any letter written by the Ombudsman or by an inmate of any provincial Correctional Institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman or to the inmate or to the patient, as the case may be, it shall be immediately forwarded unopened, to the Ombudsman or to the inmate or to the patient, as the case may be, by the person for the time being in charge of the institution, training school or facility." <sup>16</sup>

The Committee was also urged by the Ombudsman's staff and The Deputy Minister of Correctional Services to consider recommending an amendment to The Ombudsman Act or other appropriate provincial legislation to provide for the same privilege against censorship etc., for inmates incarcerated in provincial institutions who, for any reason, wish to communicate with The



Correctional Investigator charged with the responsibility of investigating complaints emanating from federal penal institutions. The Committee was informed by the Deputy Minister that it is the policy and practice of the Ministry and its officials to afford the same privilege of confidentiality to those types of correspondence as is afforded to those passing to and from the Ombudsman's office. The Committee is of the opinion that further consideration is required before any recommendation could be made in this area. Accordingly, it recommends that the Ombudsman address himself to this issue in his next report and formulate whatever recommendation he deems to be appropriate. <sup>17</sup>

### 3. Ministry of Health

(i) Complaint #85 at page 471 of the Report, raises the issue of the Ombudsman's jurisdiction over the Health Disciplines Board appointed by the Lieutenant Governor in Council pursuant to the provisions of The Health Disciplines Act, 1974. The Ombudsman in his Report specifically excludes from his jurisdiction self-governing professions such as The Law Society of Upper Canada, The Royal College of Dental Surgeons of Ontario, and The College of Physicians and Surgeons of Ontario. In the circumstances of this complaint, the Ombudsman investigated and formed opinions in respect of a matter which was originally dealt with by a self-governing profession, The Royal College of Dental Surgeons of Ontario, through its Complaints Committee. This Select Committee is concerned whether it was the intention of the Legislature that the Ombudsman have jurisdiction over this tribunal which enjoys a unique relationship with all Health Disciplines in



Ontario.

The Committee was informed that the Ombudsman's opinion is that the Health Disciplines Board is a "governmental organization" within his jurisdiction on a simple reading of the definition of governmental organization found in Section 1(a) of The Ombudsman Act. The representative of the Ministry of Health, however, is of the opinion that having regard to the nature and function of the Health Disciplines Board, it is not an administrative unit of the Government of Ontario and as such not a governmental organization as defined by The Ombudsman Act.

The Committee has not, as of this date, heard representation from the Health Disciplines Board or any representative thereof. The Committee is aware, however, that the Health Discipline Board has shown the utmost co-operation with the Ombudsman's office in any investigation of its decisions and, as of this date, has not raised in issue the matter of the Ombudsman's jurisdiction.

In his "Blueprint Report" the Ombudsman intends to recommend that a schedule of governmental organizations be annexed to his Act containing an exhaustive list of those administrative units over which his office has jurisdiction to investigate complaints. The Committee intends, when considering that Blueprint Report at sometime in the future, to address special attention to the matter of the Health Disciplines Board. At that time, an appropriate recommendation will be made in respect of the Ombudsman's jurisdiction not only of that Board but of all administrative units wherein jurisdiction is in doubt.





Accordingly, the Committee makes no recommendation with respect to this matter at this time.

4. Ministry of Consumer and Commercial Relations

(i) Complaint #30 at page 401 of the Report, deals with the issue of the need for legislation and/or regulations for the installation of appropriate safety locking devices and screens on residential apartment buildings in Ontario. The Committee was advised by the Executive Director of the Technical Standards Division of the Ministry of Consumer and Commercial Relations that the Ontario Building Code since January 1, 1976 has contained a provision for the locking or automatic engaging devices to control window openings for all apartment buildings constructed after January 1, 1976. There are, however, no requirements respecting similar devices in buildings erected prior to that date and it is from windows in buildings within this category that infants and young children have fallen to their death.

The Committee was also informed by the Executive Director that, subsequent to the Ombudsman's recommendations, the Honourable John Rhodes, Minister of Housing wrote to all municipal clerks in the Province of Ontario on August 30, 1976, suggesting that the municipalities employ the provisions of Section 36 of The Planning Act by passing by-laws providing for the installation of safety features in buildings constructed prior to January 1, 1976 to specifications substantially identical to those contained in the Ontario Building Code for post January 1, 1976 buildings. The effect of this suggestion, if implemented,



would be to provide for a uniform safety standard in all apartment buildings in Ontario (see Schedule "D"). The Committee notes, however, that this is a matter entirely voluntary to each municipal authority and that, to date, the suggestion has not been implemented by many.

The Committee was informed by the Executive Director that a study is presently underway, under the direction of the Ministry, with respect to the implementation of these safety features under a provincial fire code. There is, however, some general concern that the matter of these particular safety devices is outside the jurisdiction of fire control. The Committee is of the opinion that some steps must be taken immediately to reduce "substantially" the risk of injury and death in this type of situation. The Committee notes the undertaking by the Executive Director to raise this issue at forthcoming meetings with apartment owner representatives throughout Ontario with a view of enacting an educational programme wherein landlords would advise tenants of the option of having these safety devices installed.

Accordingly, the Committee recommends that the Legislative Assembly urge the Minister of Consumer and Commercial Relations to pursue with the various apartment owner representatives the matter of immediate action by them to reduce substantially the risk of injury and death in anticipation that the Minister would then report to the Assembly what actions the apartment owners have agreed to undertake in this regard. <sup>18</sup>

The Committee recognizes, however, that this recommendation



is not a satisfactory long term solution. Accordingly, it recommends that the Legislature require the Minister of Consumer and Commercial Relations to effect an immediate study with all affected groups with a view to enacting an amendment to the Ontario Building Code and The Building Code Act to provide for the mandatory installation in buildings erected prior to January 1, 1976 of the type of devices as provided for presently in the Ontario Building Code with respect to newly constructed buildings.<sup>19</sup>

(ii) Complaint #31 at page 403 of the Report, deals with the provisions of the Vital Statistics Act. At present the Vital Statistics Act does not permit the Registrar-General to change a sex designation on a birth certificate of a person who has successfully undergone sex change operative procedures.

The Committee was informed by the Deputy Registrar-General that there is at present proposed legislation within his Ministry providing for sex designation changes by a person on application, accompanied by proof from a duly qualified medical practitioner that the sex change operative procedures have in fact been successfully completed. At present, this legislation is with Cabinet for consideration.

The Committee understands the effect of this sex designation change will be as if the new designation has existed at all times. It will be noted on the birth register but will not supplant the original designation. The Committee therefore presumes that the designation will not be retrospective in its legal affect. If it were it would raise a great number of statistical and substantive legal implications. The Committee



therefore recommends that the Minister of Consumer and Commercial Relations introduce legislation, as soon as possible, to amend the Vital Statistics Act to provide authority in the Registrar-General to make such a sex designation change containing the appropriate safeguards to ensure that the effect of the sex designation change not be retrospective. <sup>20</sup>

(C) OPERATION OF THE OFFICE OF THE OMBUDSMAN

The Committee considered it was necessary to review and report to the Legislature on the operation of the office of the Ombudsman internally and with respect to its working relationship with various governmental organizations and with the Legislative Assembly. The purpose of this inquiry was, in part, to determine whether the formulation of any rules for the guidance of the Ombudsman in the exercise of his functions is at this time appropriate. After hearing from each of the Directors of the Directorates comprising the Ombudsman's office, which are described in Chapters One, Three and Four of his Report respecting their functions, responsibilities and operations within the office, the Committee has decided that it is not necessary or appropriate at this time to formulate any general rules for the guidance of the Ombudsman. The reason for this decision is that the formulation of any general rules in the absence of the Committee's consideration and reporting upon the "Blueprint" of the Ombudsman which will be tabled this spring, would be a duplication of effort with potentially inconsistent results.

The Committee has noted a number of matters in this





Report which it considers significant and which will, in its opinion, serve to assist the Ombudsman and his office in mastering all of the skills and insights required of all concerned to discharge the functions required of the Ombudsman under the Act. These comments are made to underline the very important principle that the functions of the Ombudsman must be carried out with scrupulous adherence to the provisions of the statute.

1. Directorates Within The Ombudsman's Office

The Committee notes that the Directorates are constituted and staffed principally to perform or assist in one or a combination of the following functions of the Ombudsman: complaint receiving, investigative, opinion and recommendation formulating. Generally, the Directorates are designed to work both independently of one another and inter-dependently depending on the nature of the complaint received, the assistance required to the complainant and the complexity and substance of any investigation required.

Two directorates, the Directorate of Institutional and Special Services and the Directorate of Rural, Agricultural and Municipal Services, perform in many respects, independently of the other Directorates. The Committee recognizes that these two Directorates were initiated largely to assist special categories of people with special problems. However, the Committee is concerned as to the "enormous backlog" of cases that exist within the office of the Ombudsman and within The Directorate of Institutional and Special Services in particular. The Committee notes a comment made by the Director of Institutional and Special



Services in a letter written to a complainant that having regard to the large backlog of cases the office has, the investigation may "take several months". The Committee recommends that the Ombudsman consider its observations concerning the Directorates within his office that perform independently of the other Directorates and the backlog of cases which exist within his office, with a view to ensuring that his entire staff be available for front-line duty to every complainant regardless of special category or status to ensure that all complaints can be brought to their appropriate conclusion within the shortest period of time. <sup>21</sup>

The Committee also notes that, in some circumstances, the Directorates perform a duplication of service. For example, the Directorate of Interview Services performs the identical service with respect to complaints received in person or by telephone as does the Legal Office Directorate with respect to complaints received in writing. Also, the Legal Directorate instructs the Directorate of Interview Services to prepare the "information and advice" type of letter sent to complainants whose complaints are beyond the jurisdiction of the Ombudsman, for the signature of the Legal Office Director. The Committee recommends that the Ombudsman consider its comments concerning duplication of services within his office with a view to determining whether changes might be appropriate to expedite the process of dealing with complaints, especially non-jurisdictional complaints. <sup>22</sup>

The Directorate of Administrative Services is by definition and of necessity a completely independent function



within the Ombudsman's office. The Director of Administrative Services is charged with a responsibility for the control, both financial and administrative, without which the most capable of staff would be reduced to chaos. The Committee commends the Ombudsman for his choice of Director of Administrative Services. His sense of duty and organization will serve the office well in the future.

## II. Preliminary Investigations

The Committee learned that the Ombudsman's office, the Directorate of Institutional and Special Services in particular, employs a procedure called "Informal or Preliminary Investigations", wherein a member of the Ombudsman's staff attends upon a complainant, generally in a penal institution, after the initial complaint is received, for the purpose of either confirming the substance of the initial complaint or taking such action as is considered appropriate and necessary to effect an immediate satisfactory disposition of the matter in question. The Committee commends and supports this procedure wherever appropriate.

However, it is of the opinion that this procedure must be strictly limited to those cases wherein further information is required for confirming a complaint or where immediate assistance is required and the circumstances of the complaint make the procedural requirements contemplated by the Act impossible. Once the substance of the complaint has been confirmed or where an immediate disposition of the matter is neither possible nor advisable, the normal investigative





procedures required by The Ombudsman Act must be undertaken. To do less would expose the office of the Ombudsman and through it the complainant, to a challenge, on substantive legal grounds, of any opinion and/or recommendation the Ombudsman might ultimately make.

### III. Delegations Pursuant to Section 27 of The Ombudsman Act

The Committee was informed that as of January 10, 1977, the Ombudsman had not delegated in writing to any persons holding any office under him any of his powers under the Act that he is permitted to delegate, except in those circumstances wherein the Ombudsman deemed it to be appropriate. The Committee is concerned that the absence of written delegation to members of his staff carrying out his functions under the Act expose him and his staff to a challenge of want of authority in any given circumstance. Accordingly, the Committee requested that the Ombudsman consider issuing the appropriate delegations in writing immediately. The Committee is pleased to report that the Ombudsman had instructed his Director of Legal Research to prepare the appropriate delegations for all members of his staff carrying out Ombudsman functions. These written delegations were issued by the Ombudsman on February 28, 1977 to members of his staff. The forms of the delegations are attached to this Report as Schedule "E".

### IV. Form of Complaints in Writing

In some circumstances, especially where a complainant is unable to write, a "complaint in writing" as required by Section



17(1) of The Ombudsman Act consists of a memorandum prepared by a member of the Ombudsman's staff. It also appears that in some circumstances this memorandum will serve to initiate an investigation, without the "complainant" being informed of and confirming its contents.

The Committee is concerned that, in every case, before an investigation is commenced, a complainant be informed of the content of the "complaint" and be provided with a copy and affirm in some appropriate manner, the contents thereof. This will avoid the possibility of any misunderstanding in the future that a person did not intend a complaint to be made or that the substance of the complaint was misunderstood by the Ombudsman's office.

#### V. Period of Time Spent on Jurisdictional vs Non-Jurisdictional Complaints

The Committee recognizes the policy of the Ombudsman that with respect to matters falling outside his jurisdiction, every effort is made to ensure "that no one coming to the Ombudsman for help leaves without having his or her situation carefully and impartially reviewed". The Committee also notes that this is a reflection of a desire of members of the Legislature to assist people in some degree in order that they not leave the Ombudsman's office with a feeling of more frustration and anger than they had before seeking the Ombudsman's assistance.

The Committee notes, however, that in the period referenced by the Report a great many man hours of the Ombudsman's office were spent after the issue of jurisdiction was determined,



in determining what could be done to help that individual find his or her way to the appropriate place to voice his or her complaint. The Committee also notes that within the period referenced by the Report there was a substantial equality in the time spent on cases falling within the Ombudsman's jurisdiction and those cases falling outside. The Committee recognizes that, in some degree, this equality may be a factor of the learning process. Within the learning period matters are being researched for the first time to determine jurisdiction and the avenues available for assistance. To the extent that this is a contributing factor, the Committee expects in the following Ombudsman reports that the duration of the time required in non-jurisdictional matters will have dropped significantly in comparison to those for jurisdictional matters.

However, the Committee notes the extremely heavy workload carried by the Ombudsman's office and the significant backlog of cases in some of the directorates. The Committee is of the opinion that the Ombudsman must be very careful to weigh the consideration of assisting all persons coming to his office against the possibility that those persons who have complaints within his jurisdiction are having the processing of their complaints unduly delayed. There is a point in time where the Ombudsman's policy of assisting persons with non-jurisdictional problems must in some degree give way to the processing of jurisdictional complaints already within his office. The Committee recommends that the Ombudsman give his policy relating to time spent by his office on non-jurisdictional matters all appropriate consideration and address himself to the question of whether



complaints within his jurisdiction are being delayed as a result of this policy in his next semi-annual or annual report.<sup>23</sup>

#### VI. Personal Contact with Complainants

The Committee was informed by members of the Ombudsman's staff that personal contacts are made with complainants wherever possible. It is a fact, however, that within the period referenced in the Report, the number of personal contacts made with complainants living in and near Toronto greatly exceed those in the other areas of the province. The Committee recognizes that geographic realities are in part a reason for this fact.

However, the Committee expressed concern during its meetings with the Ombudsman and his staff that from the material reviewed, supplied from the Ombudsman's office, it appeared that, to some degree, once a complaint was lodged a complainant was transferred from a "person to a file". It also appeared from material supplied by the Ombudsman's office that communication emanating from the Ombudsman's office, on a regular basis, keeping the complainant informed of the status of the complaint, was wanting.

The Committee therefore recommends that the Ombudsman consider these observations with a view to improving firstly, the number of personal contacts made with complainants and secondly, adopting a procedure within his office to keep complainants informed, on a regular basis, as to the status of their complaint.<sup>24</sup>





VII. Ombudsman's Report and Recommendations  
Under Section 22(3) of The Ombudsman Act

Within the period referenced by the Report, many reports and recommendations sent to governmental organizations pursuant to this section contained opinions and recommendations other than in the exact wording contained in Section 22(1) and 22(3) of The Ombudsman Act. The Committee was advised that the Ombudsman is concerned over the reaction of some governmental organizations to the actual wording of Section 22. For example, the words "unjust, oppressive, or improperly discriminatory", might be inflammatory and tend to alienate the particular governmental organization thus making the Ombudsman's efforts more difficult.

The Committee sympathizes in some degree with the concern of the Ombudsman's office in this situation. However, it is of the opinion that any deviation from the wording in Section 22 in a report of the Ombudsman of his opinions and recommendations leaves the matter of his opinions and recommendations open to interpretation and therefore doubt or challenge by the governmental organization affected.

The Committee was informed by the Director of Legal Research that the Ombudsman now records those parts of sub-section (3) of Section 22 upon which his opinion is based and precisely what recommendations he has made in consequence thereof. These matters are now recorded contemporaneously with the formulation of the Ombudsman's opinion and the formulation of the appropriate recommendations. The Committee commends the Ombudsman and his



staff for this new procedure. However, the Committee recommends that the Ombudsman consider the necessity of reporting to governmental organizations opinions in the strict wording of Section 22(3) to alleviate any possible doubt or challenge as to the Ombudsman's authority for making recommendations.<sup>25</sup>

VIII. Notice to Governmental Organization or Person Pursuant to Section 19(3) of The Ombudsman Act

A significant portion of the Committee's discussions with the Ombudsman's staff centered around the obligation on the Ombudsman to give a notice pursuant to Section 19(3) of The Ombudsman Act to any person who may be adversely affected by any report or recommendation the Ombudsman might make. The Committee was informed that the Ombudsman is of the view that before a "person" is entitled to receive such a notice, the report or recommendation must be adverse and must adversely affect that person. The term "adversely affect" as it appears to be interpreted by the Ombudsman applies to persons in limited situations. For example, where there is a possibility of disciplinary proceedings being commenced; a severe loss of reputation resulting; or a financial loss being suffered.

The Committee was also provided with a copy of an independent legal opinion given to the Ombudsman in December, 1976, which the Ombudsman believes supports the above interpretation. The Committee disagrees with the interpretation the Ombudsman has placed on his obligations to give notice pursuant to this section. The word "adverse" in Section 19(3) must relate to the opinions the Ombudsman may formulate pursuant to Section 22(3) of The Ombudsman Act and any recommendations that



are appropriate thereunder with respect of a decision, recommendation, act or omission made by a governmental organization or a person representing that governmental organization. Wherever the Ombudsman's opinion, report or recommendation identifies or is capable of identifying a person within the governmental organization who may have made or contributed to the decision, recommendation, act or omission, which is the subject matter of the investigation etc., then the Ombudsman has an obligation to give, in addition to the governmental organization, that person a notice pursuant to Section 19(3), and with it an opportunity of making whatever representations are appropriate. It is not enough for the Ombudsman to assume that the governmental organization will inform the person affected and ask that person to provide input to whatever representations the governmental organization may believe to be appropriate. By affording the person an opportunity of making representations on his own the Ombudsman is assured of a more complete and impartial investigation before his opinion and recommendations are finalized.

The Committee recognizes that in some circumstances such as an investigation of the scope of the North Pickering Project, the number of notices required from the Ombudsman to persons would be large and that the follow-up required by his office would be time consuming and may serve to prolong the investigation. However, in view of the implications and substantial effect that such recommendations will have in the circumstances, the Committee is of the opinion that the Ombudsman has a duty to give to every person, who was, at all material



times, within the governmental organization and who will be identified in the Ombudsman's final Report, the opportunity to be heard. Wherever the Ombudsman is in doubt as to whether or what persons ought to be given such a notice, he should be overly broad rather than restrictive in his application of the notice provision in this section.

The Committee therefore recommends that:

- (a) The Ombudsman Act, 1975 be amended so as to specifically require the Ombudsman to give notice to all persons who may be adversely affected by any report and,
- (b) in the interim the Ombudsman follow this practice of liberal or wide interpretation of the notice requirement of Section 19(3).<sup>26</sup>

### PART III

#### PROVINCIAL AUDITOR'S REPORT

The Provincial Auditor's Report on the audit of the Office of the Ombudsman for the period from inception on July 10, 1975 to March 31, 1976, was delivered to the Ombudsman on the 28th of September, 1976. The Committee reviewed the matters raised by the Provincial Auditor with the Ombudsman's Director of Administration who is responsible for all matters relating to the fiscal control of the Ombudsman's staff. The Director provided the Committee with a progress report on what steps the Ombudsman's office has taken in response to the Provincial





Auditor's recommendations, which are summarized at pages 112 and 113 of the report of the Provincial Auditor to the Legislative Assembly of Ontario for the year ended March 31, 1976.

Generally, this Committee can report that the Ombudsman's office has acted quickly and positively to improve those practices referenced by the Provincial Auditor in ways that will reduce the possibility of further concern and comment. The Committee notes, however, that to the date of writing this report the Ombudsman has chosen not to wholly adopt the Provincial Auditor's recommendations with respect to:

- (a) the adoption of the Manual of Administration of Government; and
- (b) purchasing procedures respecting equipment and supplies and in particular, automobiles.

The Ombudsman's Director of Administration is of the opinion that the Manual of Administration used by the Government of Ontario is appropriate to be adopted by the Ombudsman's office. The Committee was informed that the Ombudsman, however, takes the position that the Manual ought not to apply where special circumstances relating to his office dictate that the procedures in the Manual are impossible to observe without unduly restricting his ability to fulfil, in some circumstances, any function under The Ombudsman Act.

The Committee is of the opinion that one of the purposes and effects of the Manual of Administration is to provide the maximum of financial control and safeguards over



funds used by the public sector which are held by many to be in the nature of "trust funds". The Committee is concerned that the Ombudsman and his office be immune from any criticism respecting the use or misuse of public funds. The Committee was further impressed by the opinion of the Director of Administration that all of the matters referenced by the Provincial Auditor in his Report would have been avoided had the Manual of Administration been adopted and employed by the Ombudsman since the inception of his office. Accordingly, this Committee recommends that the Ombudsman be required to adopt the Manual of Administration as the manual of his office. <sup>27</sup>

The Provincial Auditor further recommended after noting that five (5) vehicles were purchased by the Ombudsman's office without the benefit of tenders, that the facilities of the Ministry of Transportation and Communications be used hereafter for the purchase of all vehicles. It appears that the Ombudsman's office now uses the purchasing facilities of the Ministry of Transportation and Communications wherever the required waiting period is suitable to the needs of the office. Where, however, the waiting period is considered to be too long, the office has purchased vehicles after obtaining competitive quotations, at the lowest available price.

The Committee recognizes that during the Ombudsman's first year of operation, there may have been special circumstances which required automobiles to be purchased within a relatively short period of time. However, the Committee can foresee no circumstances in the future wherein the purchase of any automobiles



would be required in a period less than the usual waiting period required with the Ministry of Transportation and Communications. Accordingly, the Committee recommends that hereafter the Ombudsman's office use the purchasing facilities of the Ministry of Transportation and Communications for the purchase of any additional or replacement automobiles required by his office. <sup>28</sup>

#### PART IV

#### FINAL REPORT OF THE SELECT COMMITTEE ON THE FOURTH & FIFTH REPORTS OF THE ONTARIO COMMISSION ON THE LEGISLATURE ("THE MORROW COMMITTEE")

At pages 51 and 52 of its Report, The Morrow Committee makes reference to the Select Committee on the Ombudsman and makes the following comment:

"This Committee feels confident that such a small committee is appropriate to consider the Ombudsman's Report and should include in its considerations procedures for review of the estimates for the office of the Ombudsman and requests for amendments to the governing legislation.

The implementation of the recommendations of the Second Interim Report regarding committee structure will require a review of the role and purpose of all Committees, including the Select Committee on the Ombudsman, and at that time the principles relating to committees and sub-committees, as stated in the Report,



should be adhered to".

The Second Interim Report of the Morrow Committee dated June 22, 1976 at pages 26 and 27, recommends:

"...that three large standing committees be established, aligned with the policy fields of justice, social development and resources development, and a fourth for Treasury, Revenue and other ministries not in policy fields.

The House should always have the power to appoint select committees, for example, the striking committee; however, the Committee recommends that special studies which are now being done by select committees should normally be referred to the appropriate standing committee, which could appoint a sub-committee to undertake the study".

This Committee interprets the "principles", relating to committees as contained in the Second Interim Report of The Morrow Committee to provide that the Select Committee on the Ombudsman be restructured to be included as a "sub-committee" of one of the standing committees recommended on page 27 of the Second Interim Report. The Committee does not consider it appropriate at this time to comment on the effect of The Morrow Committee's recommendations as they affect it until the final report has been fully studied by all Members and debated in the House.





However, the Committee does consider that having regard to the present Order of Reference of this Committee and the recommended expanded Orders of Reference for it by the Ombudsman and The Morrow Committee, that it should be permitted to continue without interruption of authority and substance whether it be restructured as a part of a permanent standing committee or a continuing special Select Committee. The relationship that exists between the Ombudsman and the Legislature requires a Select Committee of this nature with authority and flexibility to deal, on a continuing basis, with matters affecting the Ombudsman such as reports, rules for his guidance in the performance of his functions under the Act and any other matter arising which is within its order of reference. The Committee is of the opinion that the Legislature and the Ombudsman require a continuing and permanent committee in substantially the same way as the Legislature and the Provincial Auditor require the Public Accounts Committee. The Committee should have and continue to have an identity of its own to deal with the unique matters that arise from the consequence of the operation of the Ombudsman's office.

#### PART V

#### EXPANSION OF ORDER OF REFERENCE OF THE SELECT COMMITTEE ON THE OMBUDSMAN

It is noted that The Morrow Committee recommended that this Committee's Order of Reference be expanded to review estimates of the office of the Ombudsman. The Committee notes that this recommendation is consistent with that contained in the



Select Committee on the Rules and Guidelines for the Ombudsman  
(Votes and Proceedings, December 11, 1975).

The Committee concurs in these recommendations. By nature of its present Order of Reference and the continuing relationship that exists between it and the Ombudsman's office, it is acquiring the necessary experience and insights into that office for the purpose of fully and adequately inquiring into the matter of the Ombudsman's estimates.

The Committee recognizes, however, that preliminary estimates for the Office of the Assembly, The Provincial Auditor, The Commission on Election Contributions and Expenses, and The Ombudsman are submitted to the Board of Internal Economy. The Committee therefore perceives its role with such an expanded Order of Reference as receiving preliminary estimates of the Ombudsman for the fiscal year in question, after they have been tabled in the House. The Committee would then consider the estimates and report to the House in whatever way it considers appropriate. This would comply with Sections 54 and 90 of The British North America Act and Standing Order 86 of the Legislative Assembly of Ontario.

Accordingly, the Committee recommends that its Order of Reference be expanded to provide that "it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate".<sup>29</sup>



PART VI

RELATIONSHIP BETWEEN THE OMBUDSMAN, HIS OFFICE  
AND MEMBERS OF THE LEGISLATIVE ASSEMBLY

The Committee was informed that recently procedures have been implemented by which a member is informed beforehand by the Ombudsman's office of any attendance by him or a member of his staff in the constituency for the purpose of conducting public or private hearings.

Additionally, it is a matter of procedure now with all complaints that are received at the Ombudsman's "private hearings", that complainants are asked if their M.P.P. may be informed on a continuing basis of the nature of the complaint and its progress through the Ombudsman's office.

Subsequent to the passing of The Ombudsman Act, 1975 and Mr. Maloney's appointment as Ombudsman in October of that year, legislation was passed by the House providing for each member to have a constituency office.

The key to an effective relationship between the Ombudsman and members of the Assembly is liaison, on a continuing basis where it makes sense to do so, between the office of the Ombudsman and the constituency offices of the members. The Committee recognizes that each member has an individual style and method in working with constituents to solve problems and will, as a result, develop liaison with the Ombudsman as appears appropriate to that member. The Committee members do, however, wish to emphasize to their colleagues in the Assembly that the office of the Ombudsman was established as



an independent avenue available to the citizen of the province for the purpose of hearing complaints.

There are instances in which efforts are being duplicated and therefore the Ombudsman should attempt to ascertain from the member on a confidential basis, and with the complainant's permission if a particular complaint has already been handled by a member or his or her office.

The Committee is of the opinion that a member's constituency office can assist the Ombudsman in dealing with complaints. Such an arrangement would serve to assist the Ombudsman in sorting out informally matters at the constituency level.

The Committee invited comments and observations from each M.P.P. on the operation and role of the office of the Ombudsman. The Committee considered it was necessary to invite particular members to appear before it. The discussions which took place with these members were of benefit and assistance to the Committee. The Committee believes it is important the M.P.P.s feel free to write to the Committee at any time.

The matters raised by the members who responded to the Chairman's letter referenced in the Introduction included comments about: the processing of complaints; size and efficiency of operation; relationship with complainant; breadth of the Ombudsman's jurisdiction with respect to investigation of complaints on his own motion; the relationship between the Ombudsman and the M.P.P.; and the possible effect of the Ombudsman's office on the legislative process. All matters will be reviewed further by the Committee.





At a late stage in its proceedings, Mr. Patrick Reid, M.P.P. for Rainy River, wrote to the Committee stating that a member of the Ombudsman's staff had appeared on two cable television programmes with the nominated Progressive Conservative candidate in Mr. Reid's riding. Mr. Reid was concerned that these television appearances had left a question in the minds of his constituents about the impartiality and non-partisanship of the office of the Ombudsman.

At the Committee's invitation, Mr. Reid appeared before it on March 22, 1977. The Ombudsman, having earlier given his opinion to the Committee that it had no authority to deal with Mr. Reid's concern, left the meeting. The Committee has the authority to deal with concerns of this nature. Mr. Reid explained his concern to the Committee.

The Committee considered the Ombudsman's reply to Mr. Reid and his conclusion that two members of his staff had erred in judgment, as well as the letters of apology from the two staff members. The Committee is of the opinion that the Ombudsman did not understand the nature of Mr. Reid's concern.

The Committee regrets the conduct of the Ombudsman in walking out of the Committee's meeting, although requested by the Committee to remain. This was an ill-advised act displaying an unfortunate attitude and a misunderstanding of the role of this Committee and its obligation to report to the Assembly.

In the opinion of the Committee there must be an on-going relationship based on mutual respect and understanding



between the Ombudsman and the Committee. In order to achieve this respect and understanding, the Committee chooses not to comment at length upon this incident or to make any recommendation about it. The Committee hopes it will not occur again.

The Committee believes that the public is best served by the on-going dialogue between the Ombudsman and the Assembly through this Committee, as envisaged by the Legislature when the Act was passed; by the Select Committee under the Chairmanship of Vernon Singer, Q.C., M.P.P.; and by the Legislature when it appointed this Select Committee. The essence of the relationship between the Assembly and the Ombudsman does not lie in any legislative definition of jurisdiction, but in good faith, mutual respect, and co-operation, with open and free discussion between this Committee and the Ombudsman. The Committee urges this view on the Ombudsman.

## PART VII

### AMENDMENTS TO THE OMBUDSMAN ACT

The Committee has reserved any substantial consideration of this matter pending its receipt and consideration of the Ombudsman's "Blueprint". It has, however, already recommended that the matter of Section 17(2) of The Ombudsman Act be amended to provide for the reciprocal "privilege" in respect of the Ombudsman's communications to inmates of provincial penal institutions.

The Committee's attention was addressed by the Ombudsman's Director of Research to Section 22(3)(g) of The Ombudsman Act. The



Report of the Debates of the House dated June 19, 1975 at pages 3167-3168 contains a motion by the House that the sub-section be amended to read "that any other steps or recommendations should be taken". However, the amendment was omitted from the final printing of the Act as passed by the House. The Committee has been informed that even though the omission may be classified as a clerical error, it must be amended by motion of the House. Accordingly, the Committee recommends that Section 22(3)(g) of The Ombudsman Act be amended by deleting:

"(g) that any other steps should be taken,"

and substituting therefor,

"(g) that any other steps or recommendations  
should be taken." 30

The Ombudsman, in his Report and during his attendance before this Committee, requested that The Ombudsman Act be amended to allow him, in his discretion, "to make public any of his reports if he feels it is in the public interest to do so", (page 27 of his Report). The Committee assumes the section the Ombudsman recommends be amended is Section 13. The Committee is concerned that the Ombudsman's recommendation is inconsistent with the obligation he has pursuant to Section 13 not to "disclose any information received by him as Ombudsman". The Committee is not in favour of any amendment of this nature that might serve to undermine the feeling of security that a complainant has when going to the office of the Ombudsman, that matters disclosed by the complaint or during the course of the Ombudsman's investigation will not be made public. The Committee is not satisfied at this



time that an amendment in accordance with the Ombudsman's recommendation is appropriate. Instead, the Committee wishes to reserve any further consideration of this until the Ombudsman's "Blueprint" is received which of consequence will involve an exhaustive review of the nature and function of his office.

#### PART VIII

##### BOARD OF INTERNAL ECONOMY

On March 10, 1977 the Speaker of the Legislative Assembly provided the Chairman of this Select Committee with an extract from the minutes of meeting number 2/77 of the Board of Internal Economy together with a letter from Hickling-Johnston, Management Consultants, addressed to the Ombudsman, dated February 25, 1977 which documents are appended to this report as Schedule "F". The Committee wishes to particularly draw the attention of the Assembly to the contents of that letter.

With respect to the part of the Board's decision dealing with the adoption by the Ombudsman of a set of administrative standards, the Committee refers to recommendation 27 of this Report.

The third, fourth and fifth areas contained in the Board's order were referred to the Committee for review. This Committee has accepted the reference of these matters by the Board of Internal Economy. Some aspects of them have already been considered by the Committee and reported on in this Report. These matters will also be part of its on-going consideration of the office of the Ombudsman.





SCHEDULE "A"

SUMMARY OF RECOMMENDATIONS

1.           The Legislative Assembly request that the Order-In-Council again be amended to remove any ambiguity as to the meaning of "adversarial nature" and so as to give effect to the agreement reached on October 1, 1976 as intended by the Ombudsman, the Minister of Housing and this Select Committee, by removing the sentence "all matters referred to this Commission shall be heard and determined in proceedings of an adversarial nature" from Order-In-Council, OC 2959/76.   (page 4)
  
2.           The Legislature require the Workmen's Compensation Board to print the Board's pamphlet entitled "Information About The Appeals Procedure" in the same five languages as its "Claims Information" booklet.   (page 9)
  
3.           The Legislature require the Workmen's Compensation Board to prepare a separate booklet or information circular in the same five languages to be forwarded to all claimants along with the form H1 letter and containing a description of the Board's appeal process and the procedures required thereby, based on the document tabled with the Committee by the Vice-Chairman of Appeals and attached as Schedule "C" to this Report.   (page 10)
  
4.           The booklet or information circular should also contain a very clear and obvious statement that if the claimant



does not understand any matter of the process or the procedures described, he or she should communicate with identified individuals within the Workmen's Compensation Board. (page 10)

5. The Workmen's Compensation Board review its policy regarding disclosure of its file to a claimant personally, with a view to its amendment to a policy of complete and full disclosure to the claimant. (page 11)

6. The Ombudsman in his next or subsequent reports address himself to this issue of Workmen's Compensation Board appeal procedures and at that time or times provide the Committee with more detailed findings and examples of the complexities within those procedures which from the continuing experience of his office are considered to be causing confusion in the minds of claimants. (page 12)

7. The Ombudsman and the appropriate Workmen's Compensation Board Commissioners immediately commence discussions for the purpose of arriving at a mutually satisfactory working relationship. (page 12)

8. The Ombudsman report in his next report to the Committee the status of the working relationship with the Workmen's Compensation Board and any improvements his office has noted with respect to its ability to process Workmen's Compensation Board complaints. (page 13)



9. The Workmen's Compensation Board make available to the Ombudsman's office all appropriate Commissioners, Appeals Administrators and operating staff for the purpose of providing information relating to any matter that is being investigated by the Ombudsman. (page 14)

10. The Ombudsman address himself to his observations quoted at page 15 of this Report in his next or subsequent reports as they apply to complaints against police conduct in light of any new legislation passed and the subsequent experience of his office. (page 19)

11. The Legislative Assembly require the Ministry of the Attorney-General in concert with the Ministry of Transportation and Communications, to effect a centralized scheme, using the computer resources of the Ministry of Transportation and Communications, whereby licences that have been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines. (page 20)

12. The Ministry of the Attorney-General develop a centralized scheme for the payment of fines throughout Ontario with the aid and assistance of whatever computer resources are considered appropriate and necessary in the circumstances. (page 21)

13. A clear policy of the Ministry of Correctional Services is required to provide for the superintendent or his appropriate designate to conduct a hearing in respect of disruptive



behaviour, as soon as possible subsequent to the actual behaviour, so that the time spent by an inmate in segregation before a hearing is minimum in the circumstances. Such a hearing should be conducted within twenty-four hours of the event. Appropriate amendments should be made to the regulations under the Ministry of Correctional Services Act to provide that, at all times, someone is present at the institution with the authority to conduct such a hearing. (page 24)

14. The Ministry of Correctional Services be required to inform all inmates in provincial Correctional Institutions of the expansion of OHIP coverage available to inmates, by means additional to its information booklet. (page 25)

15. The Ombudsman consider the matter of information respecting OHIP coverage to inmates for examination and treatment by qualified specialists, in his next or subsequent reports and advise the Committee as to the extent to which the problem inherent in this complaint has been alleviated. (page 25)

16. Section 17(2) of The Ombudsman Act be repealed and the following substituted therefore:

"Notwithstanding any provision in any Act, when any letter written by the Ombudsman or by an inmate of any provincial Correctional Institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman or to the inmate "





or to the patient, as the case may be, it shall be immediately forwarded unopened, to the Ombudsman or to the inmate or to the patient, as the case may be, by the person for the time being in charge of the institution, training school or facility." (page 26)

17. The Ombudsman address himself to the question of further legislative amendment to provide for a privilege against censorship etc. for inmates incarcerated in provincial institutions who so wish to communicate with The Correctional Investigator responsible for investigating complaints emanating from federal penal institutions in his next report and formulate whatever recommendation he deems to be appropriate. (page 27)

18. The Legislative Assembly urge the Minister of Consumer and Commercial Relations to pursue with apartment owner representatives the matter of immediate action by them to reduce substantially, the risk of injury and death by falls by infants and young children from windows in apartment buildings constructed prior to January 1, 1976. (page 30)

19. The Legislature require the Minister of Consumer and Commercial Relations to effect an immediate study, with all affected groups, with a view to enacting an amendment to the Ontario Building Code and The Building Code Act to provide for the mandatory installation in buildings, erected prior to January



1, 1976, of the type of locking or automatic engaging devices to control window openings as provided for presently in the Ontario Building Code with respect to newly constructed buildings. (page 31)

20. The Minister of Consumer and Commercial Relations table legislation, as soon as possible, to amend the Vital Statistics Act to provide authority in the Registrar-General to make a sex designation change on a birth certificate of a person who has successfully undergone the necessary operative procedures, containing the appropriate safeguards to ensure that the effect of the sex designation change not be retrospective. (page 32)

21. The Ombudsman consider the Committee's observations concerning the Directorates within his office that perform, in many respects, independently of the other Directorates and concerning the backlog of cases which exist within his office with a view to ensuring that his entire staff be available for front-line duty to every complainant regardless of special category or status to ensure that all complaints can be brought to their appropriate conclusion within the shortest period of time. (page 34)

22. The Ombudsman consider its comments concerning a duplication of services within his office with a view to determining whether changes might be appropriate to expedite the process of dealing with complaints especially non-jurisdictional complaints. (page 34)



23. The Ombudsman give his policy relating to the amount of time spent by his office on non-jurisdictional matters all appropriate consideration and address himself to the question of whether complaints within his jurisdiction are being delayed as a result of this policy in his next semi-annual or annual report. (page 39)

24. The Ombudsman consider the Committee's observations on personal contact with complainants with a view to improving firstly, the number of personal contacts made with complainants and secondly, adopting a procedure within his office to keep complainants informed, on a regular basis, as to the status of their complaint. (page 39)

25. The Ombudsman consider the necessity of reporting to governmental organizations opinions in the strict wording of Section 22(3) to alleviate any possible doubt or challenge as to the Ombudsman's authority for making recommendations. (page 41)

26. (a) The Ombudsman Act, 1975 be amended so as to specifically require the Ombudsman to give notice to all persons who may be adversely affected by any report and,  
(b) in the interim the Ombudsman follow this practice of liberal or wide interpretation of the notice requirement of Section 19(3). (page 43)



27. The Ombudsman be required to adopt the Manual of Administration as the manual of his office. (page 45)

28. The Ombudsman's office use the purchasing facilities of the Ministry of Transportation and Communications for the purchase of any additional or replacement automobiles required by his office. (page 46)

29. The Order of Reference of this Select Committee be expanded to provide that "it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate." (page 49)

30. Section 22(3)(g) of The Ombudsman Act be amended by deleting:

"(g) that any other steps should be taken,"

and substituting therefor,

"(g) that any other steps or recommendations should be taken," (page 54)





SCHEDULE "B"

- "1) The cases disputed in the Minister of Housing's reply of August 31st, 1976 and any other cases where the negotiations were handled by one of the five Applicants to the Motion presently before the Divisional Court will immediately have their cases dealt with by a Commission consisting of some members of The Land Compensation Board, Judicial, and/or Senior legal persons.

This Commission is to be set up by Order-in-Council under The Public Inquiries Act, 1971 so as to avoid any delay which might result if the matters were to go directly to The Land Compensation Board and the enabling legislation that might be required.

The Commission so appointed will be empowered to consider in the first instance the over all merits of the claims for additional compensation of the former land owners. In making this determination the Commission shall be empowered to take into account all the circumstances of each particular case, including but without limitation, any misleading statements, inadequate appraisals, or misunderstandings based upon reasonable grounds in the circumstances of the particular case.

The Commission shall determine what allegations of misconduct are made against the five Applicants to



the Motion presently before the Divisional Court in the Report of the Ombudsman and whether they are justified.

Secondly, the Commission shall be further empowered to determine the amount of additional compensation to be paid to the former landowners in the cases where entitlement has been established. In making this determination, the Commission shall take into account any benefits or profits derived from the use made of the compensation paid on the original sale.

- 2) The balance of the 44 cases named in the Ombudsman's Report and additional complaints lodged with the Ombudsman relating to the North Pickering Project totalling approximately 55 to date, will be dealt with in the following manner:

The Ombudsman will reopen the investigation into the merits of the balance of the 44 cases. In all of these cases and any new cases coming before the Ombudsman, the Ombudsman will conduct a hearing pursuant to Section 20 (2) of The Ombudsman Act, 1975.

The Minister of Housing has undertaken to accept the Ombudsman's recommendation in relation to the aforementioned cases and, where appropriate, to refer immediately any such cases to the Land Compensation Board. The Land Compensation Board in dealing with these cases, shall only determine the amount of compensation to be given, taking into consideration any benefits or profits actually derived



from the use made of the compensation paid on the original sale.

In view of the fact that under this solution the merits of all of the cases will be determined by proceedings of an adversarial nature, it is understood that the Motion presently before the Divisional Court will be discontinued by the Applicants.

John Sopinka, Q.C., on behalf of the five Applicants to the motion presently before the Divisional Court was consulted by The Ombudsman and The Minister of Housing in this regard and concurs on behalf of his clients.

It is agreed that the former landowners and present and former agents and officials of the Ministry of Housing will be entitled to be represented by counsel and it is further agreed that the reasonable costs of such counsel will be borne by the Ministry of Housing as will the costs of any appraisals required. Counsel for the former landowners will be appointed by the Ombudsman.

The Select Committee endorses the agreement between the Ombudsman and the Minister of Housing and urges that it be implemented forthwith and will so report to the House. Apart from preparing this formal report to the House, the proceedings of this Committee on the Ombudsman's Report on the North Pickering Project are concluded."





Executive Council

O.C. 2959/76

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 26th day of October, A.D. 1976.

The Committee of Council have had under consideration the report of the Honourable the Attorney General, wherein he states that,

WHEREAS the Ombudsman has made a report concerning land acquisitions in the North Pickering Project,

AND WHEREAS the Minister of Housing has disputed the contents and recommendations in such report by his reply thereto dated the 31st day of August, 1976,

AND WHEREAS an agreement has been arrived at between the Ombudsman and the Minister of Housing, relative to matters in dispute which agreement was endorsed by The Select Committee of the Ombudsman,

AND WHEREAS in furtherance of the terms of such approved agreement, it is thought fit to refer





certain of these matters to an Inquiry instituted pursuant to the provisions of The Public Inquiries Act, 1971, S.O. 1971, Chapter 49.

The Honourable the Attorney General therefore recommends that pursuant to the provisions of The Public Inquiries Act, 1971, S.O. 1971, Chapter 49, a Commission be issued to appoint The Honourable J.F. Donnelly, Chairman, R.W. Grant, Q.C.; and G.P. Marriott, Commissioners to consider, recommend and report in relation to:

(I) the overall merits of claims for additional compensation of

(a) cases placed in dispute by the reply of the Minister of Housing of the 31st. day of August, 1976, to the report of the Ombudsman on the North Pickering Project;

(b) any other cases handled by any of the five agents, Applicants in the motion instituted before the Divisional Court relative to allegations of misconduct contained in the said report of the Ombudsman;

such merits of claims shall include but not so as to limit the generality of the foregoing, all circumstances of each particular case



including any misleading statements inadequate appraisals or misunderstandings based upon reasonable grounds in the circumstances of the particular case.

- (II) where entitlement to additional compensation has been recommended in the discretion of the Commission, to determine the amount, if any, of such additional compensation, having regard for such merits and taking into account any benefit or profit derived from the use of compensation paid on the original sale between the date of such sale and the date hereof.
- (III) The Commission shall also enquire into, consider and report in relation to what allegations of misconduct are made against

Terry Bortolotti

James Gilhespie

William Thompson

Joseph Kuzik

J.E. Spafford

in the report of the Ombudsman and as to whether or not such allegations, if any, are justified.

All matters referred to this Commission shall be heard and determined in proceedings of an adversarial



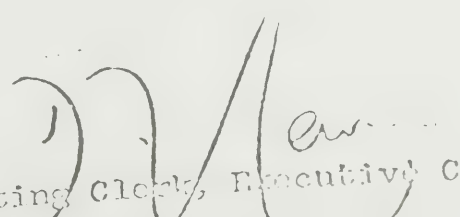
nature. The Ministry of Housing, former land owners, present and former agents and officials of what now forms part of the Ministry of Housing will be entitled to be represented by counsel who shall be paid by the Ministry of Housing. The reasonable costs of counsel and of any appraisals required for the former land owners, shall be borne by the Ministry of Housing. Counsel for the former land owners will be appointed by the Ombudsman.

The Honourable the Attorney General further recommends that all Government Ministries, Boards, Agencies and Commissions shall assist this Commission to the fullest extent in order that they may carry out their duties and functions and that they shall have authority to engage such staff as is deemed proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet.

And the Honourable the Attorney General further recommends that Part III of the said Act be declared to apply to the aforementioned Inquiry.

The Committee of Council concur in the recommendations of the Honourable the Attorney General and advise that the same be acted on.

Certified,

  
Acting Clerk, Executive Council.



WORKMEN'S COMPENSATION BOARD

A P P E A L S

A. Introduction

Section 74 of the Act provides:

(1) The Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court.

This section of the Act has remained substantially unchanged since 1914. Because Board decisions are final and conclusive there has always existed an internal right of appeal from decisions made in the operating departments or divisions of the Board. Over the years the structure of the appeals process has been changed from time to time. Changes were not difficult to effect because until recently the Act was virtually silent on the question of appeals.

.....





B. The Appeals Process in General

(i) The Legislation

Sections 74 to 81 of the Act deal with applications, appeals and the proceedings of the Board. The following sections, all of which came into force on March 15, 1974, are of particular significance in the new appeals process.

Section 76(5) empowers the Vice-Chairman of Appeals to appoint a Commissioner or other person to make and conduct an inquiry and to report to the Board on a summary of evidence, his findings of fact and his opinions thereon and the Board or panel may act on the summary, the findings and his opinion or may substitute its own findings or opinion. It is under this section that the role of the Appeals Examiner in the appeals process has been developed.

Under Section 77(1)(b) and notwithstanding Section 76 a Commissioner whenever authorized so to do by the Vice-Chairman of Appeals may hear and determine any application, appeal or proceeding, and for such purpose may exercise all of the jurisdiction and powers of the Board and the action or decision of the Commissioner shall have the same effect as the action or decision of the Board.



Section 77(2) empowers a Commissioner acting under Section 77(1) to refer or remit the matter to the Board rather than take action or render a decision. The role played by a single Commissioner in the appeals process is founded on these sub-sections.

Section 77(3) provides for an appeal from a decision of a single Commissioner of the Board.

Section 76(1) constitutes any three of the Commissioners, save and except the Vice-Chairman of Administration, a quorum of the Board for the purpose of any application, appeal or proceeding and when so acting may exercise all of the jurisdiction and powers of the Board except those contained in Section 70(3). Furthermore, by virtue of Section 76(2) the Board may sit in two or more panels so long as a quorum is present in each panel. These sub-sections provide the foundation for the place of Appeal Boards, that is panels of three Commissioners, as the final procedural stage in the Appeals process.

The administrative management of the Appeals process is the responsibility of the Registrar of Appeals who reports to the Vice-Chairman of Appeals.



Under the Sections of the Act I shall be dealing with shortly in connection with the Appeals Process, reference is made to Commissioners. It may be helpful to explain this term.

Section 55 provides that the Lieutenant-Governor in Council may appoint such persons as he may determine to be Commissioners of the Board. There are presently 14 Commissioners so appointed.

Section 56 provides that the Lieutenant-Governor in Council shall designate:

- 1 Commissioner to be Chairman;
- 1 Commissioner to be Vice-Chairman of Administration;
- 1 Commissioner to Vice-Chairman of Appeals;
- and not less than 2 and not more than 4 to be Commissioners of Appeals.

These persons constitute the Board.

The Lieutenant-Governor in Council has designated 4 Commissioners as Commissioners of Appeals. Thus the Board at the present time consists of 7 persons.

Section 57 defines the term Commissioners for the purposes of Part 1 of The Act as meaning the 7 members of the Board plus the other 7 Commissioners. However, the Vice-Chairman of Administration is excluded from the operation of Sections 76 and 77 of the Act.

Thus where the term Commissioner is used in the appeal Sections it means at the present time the other 13 Commissioners but in fact only 12 participate in the Appeals process - the Vice-Chairman of Appeals, the 4 Commissioners of Appeals and the 7 Commissioners.



(ii) Basic Adjudication System

Initial decisions on claims matters are made in the Claims Services Division by adjudicators.

Any adverse decision on a claim by an adjudicator is automatically reviewed by the Claims Review Branch of the Division and if sustained by the Branch, it prepares the decision and releases it to the parties. The Branch may of course change the decision to one in favour of the claimant.

Similar Review Groups exist in other decision making components of the Board, i.e. medical aid, rehabilitation and assessment.

The object of the review groups is to ensure that the highest level of skills and experience in a Division is involved in any divisional adverse decision.

An example of an adverse decision of the Claims Review Branch has been handed out. Note that the final paragraph of the decision deals with the right of appeal as does the pamphlet attached thereto.

Also included is Form H1 which is sent to every claimant in a lost time case once the Claims Services Division is notified of a claim, usually by the employer. On the back thereof, among other information, is information concerning the right of appeal and assistance from Workmen's Advisors.





C. The Appeals Process

All appeals from decisions of the Review Groups, (and I shall hereafter deal only with claims matters) go to the Appeals Process.

(i). Notice of Appeal

How does one commence an appeal? By writing a letter to the Registrar of Appeals as explained in the pamphlet. But we will accept appeals by telephone or by a person coming in and simply stating he is dissatisfied and wants to appeal and this can be done at any area office or information centre.

(ii) Screening of Appeals

Once an appeal is received it is referred to an Appeals Examiner. The Appeals Examiner will review the file with a view to recommending one of the following courses of action:

- a) Can the appeal be allowed as a result of new information which may now be on file or because of obvious error in the Claims Services Division. If so, the Examiner will prepare forthwith a recommended decision for consideration by a Single Commissioner who has the power to accept or reject the recommendation. If he accepts the recommendation the decision allowing the appeal will be the decision of the Single Commissioner. (Section 77(1)(b))

Nine per cent of appeals are decided in this manner.

- b) Should the appeal be referred directly to an Appeal Board panel of three Commissioners for hearing by the panel - (Sec 76(1))

If the Appeals Examiner so concludes he will recommend



that course of action to a Single Commissioner who must concur in the recommendation (Sec. 77(2)). Where this procedure is followed there is only one step in the appeals process because the Appeal Board decision following a hearing is the final level of appeal. (Section 74(1))

In 1976 about twenty-two per cent of appeals were dealt with in this manner.

- c) If the Appeals Examiner reviewing the file does not recommend a) or b) then the appeal will be referred to an Appeals Examiner for Inquiry. (Section 76(5))

(iii) Appeals Examiners' Inquiries - Single Commissioner Decisions

Where an Inquiry is to be conducted by an Appeals Examiner all parties are notified of the time and place of the Inquiry. The object of the Inquiry is to obtain all material information to ensure that a proper decision will be made on the merits of the claim. As a result of information obtained at the Inquiry, the Appeals Examiner may find it necessary to obtain further information, for example, medical reports or hospital reports, or further medical opinions.

Once the Examiner has all the necessary information he will prepare recommendations for a decision which is then referred to a Single Commissioner. (Section 77(1))



8.

The Commissioner reviews the file and the recommendations of the Appeals Examiner and has the power to confirm, modify, or reject. The decision is the decision of the Commissioner, not the Appeals Examiner, and the decision of the Commissioners is the decision of the Board. (Sec. 77(1)).

(iv) Appeal Boards

There is a statutory right of appeal from the decision of a Single Commissioner to an Appeal Board of three Commissioners (Section 77(3)). Included in the kit handed out is a sample letter sent to all parties with the decision of a Single Commissioner. An appeals pamphlet is enclosed with the letter.

An appeal may, therefore, go to an Appeal Board from a Claims Divisional decision in two ways:

- a) directly, on recommendation by an Appeals Examiner concurred in by a Single Commissioner.
- b) by way of appeal from the decision of a Single Commissioner following an Appeals Examiner Inquiry or on a decision from file.

In either case the Appeal Board always holds a hearing at which all parties are entitled to be present and make representations. The decision of the Appeal Board is final and conclusive. (Section 74(1)).

(v) Reconsideration

Section 75 of The Act provides that the Board may at any time if it considers it advisable to do so reconsider any



decision and vary, amend or revoke it. Requests for reconsideration should be addressed to the Registrar of Appeals and should contain supporting reasons such as new evidence, obvious error in the decision, allegations of improper procedure or conduct during the hearing amounting to a denial of natural justice or a change of circumstances having a significant bearing on the appeal.

#### An Inquiry System

In accordance with Section 74 of The Workmen's Compensation Act all levels of adjudication at the Board have a duty to conduct a full enquiry to ensure that all relevant information is on file in order to give every consideration to an employee's claim. This duty exists no matter how knowledgeable or articulate the employee may be and regardless of whether or not he has representation.

An illustration of this duty to inquire is to be found in the fact that in about half of the cases heard by Appeal Board panels, the panels seek additional information following the hearing.

While this occasions delay in concluding on the appeal in these cases, the Appeal Board has a duty to initiate subsequent inquiry where the information to that point is not sufficient to grant the appeal and where there are still the possibilities of establishing the case. These subsequent inquiries are reflected in the fact that of the 980 cases heard by the Appeal Board during 1976, as of December 31, 1976, 241, that is 24.59 percent have outstanding decisions.





E. Time Lapse

I understand that questions have arisen before the Committee with respect to delays in the Appeals Process. Undoubtedly there have been delays resulting in part from the introduction of a new appeals structure in 1975. But if it was suggested to the Committee that it took two years or more for a case to go through the Appeals process that is certainly not the general experience.

Based on 1976 figures I would like to take the Committee through an appeal entering the process at the present time.

As I have mentioned, the first appeal step, which is an Appeals Examiner Inquiry, will take place in about 69 per cent of all cases coming into the Appeals process. An Appeals Examiner Inquiry will be scheduled within 4 weeks if it is in Toronto and within 2 to 8 weeks if it is out of town, depending on the location and volume of cases. From the date of the Appeals Examiner Inquiry to the date the Commissioner of the Board Decision is mailed, averaging all the cases decided in 1976, is 25.19 calendar days or about three and one half weeks. This figure, of course, includes all of those cases where the Examiner conducts further investigation after the Inquiry has been held. So, where this appeal step applies, we are looking at a time factor from receipt of appeal to Decision mailed of about seven and one half weeks in most of the cases and probably ten weeks if it is an out of town case.



In 9 per cent of the cases coming into the Appeals process, the Examiner will recommend a Decision immediately to a Commissioner and these cases are concluded usually within one week.

The remaining 22 per cent of the cases coming into the Appeals process are referred directly for an Appeal Board hearing so that for this amount of cases it is a one step Appeals process.

Due to a substantial increase in appeals during 1976 there is a backlog of cases before the Appeal Board. At the present time it takes 8 weeks for an Appeal Board hearing to be scheduled. Bearing in mind that in about half of the cases heard by an Appeal Board further inquiry is carried out, it takes 39.5 calendar days from the date of the hearing until the Decision is mailed which is a little more than five and one half weeks. This figure is based on the 739 cases concluded by the Board in 1976.

If you assume a person appeals a decision of the Claims Review Branch immediately and has both an Appeals Examiner Inquiry and an Appeal Board hearing and that in neither case was it concluded at the time of the Inquiry or Appeal Board hearing, it would take 23 to 25 weeks for a case to proceed through the Appeals process.

I must emphasize that these are average figures. Undoubtedly some cases will take a shorter time and others a lot longer.

One factor over which the Board has no control is the time it takes a party to file a notice of appeal. There is no time limit on this right and we have cases where years elapse before a person submits an appeal of a decision.



Another factor which adds to delay is the Board's compliance in allowing postponements when Inquiries or Appeal Board hearing dates are set. The postponement rate for Inquiries is between 25 and 30 per cent and at a much higher rate for Appeal Board hearings. For example, in December 1976 the Appeal Board heard 83 cases but during the same month, received 73 postponement requests. Our experience is that more than 80 per cent of the postponements are at the request of the employee or his representative. When there is a postponement although we attempt to give it priority in setting a date, in many cases it must go to the end of the schedule which, in the case of an Appeal Board hearing, would be a further 2 months at the present time. We have cases where there are multiple postponements requests.

Finally, there is the problem of obtaining appointments with senior independent doctors, waiting for hospital admissions and for medical reports. Although the Board medical personnel do their best to expedite these matters, in the final analysis this is another factor over which we have no real control.

#### Review of Appeal Procedures

I understand questions have arisen before the Committee with respect to the review of Appeal Procedures by the Board. I would like the Committee to know that the Appeal Procedures remain under general review by the Board. May I give two examples:



During 1975 almost all appeals entering the Appeals process resulted in Inquiries by Appeals Examiners followed by decisions of Single Commissioners.

As a result of a review of our procedures, the screening process, which I described earlier, was introduced in the Spring of 1976. This has resulted in a number of cases being decided directly from file and has also resulted in the elimination of the two stage appeals process in some twenty-two percent of the cases.

In the Fall of 1976, the Board directed the Commissioners in Appeals to review the Appeals system. A study group was established and I have just received its report which will shortly be placed before the Commissioners and, in due course, before the Corporate Board for its consideration. These proposals are of such a nature that if ultimately approved by the Board amendments to the Act would be required.

In conclusion I want to assure the Committee that the Board welcomes constructive criticism and will be pleased to discuss with the Ombudsman any measures which he believes would bring about improvements in the Appeals process.







SCHEDULE "D"

Ministry of  
Housing

416/965-6456

Hearst Block  
Queen's Park  
Toronto Ontario  
M7A 2K5

August 30, 1976

To: All Municipal Clerks

Dear Sir:

Re: Safety of Children in Multi-  
Storey Buildings

In recent years a number of children have died as a result of falling from unprotected window and balcony openings in multi-storey buildings. Following an inquiry into one recent death, the Chief Coroner of Ontario requested that a review be made of the powers available to municipal councils to require the installation of protective features on external openings in such buildings. As a result of this review I am advised that municipalities have two ways by which they can require that such features be installed, which are as follows:

1. The new Ontario Building Code makes provision for the installation of safety features on windows and other external openings in newly constructed apartment and multi-family buildings. Municipalities, therefore, have the power to ensure that protective devices be required in buildings erected in accordance with the new Ontario Building Code.
2. These new provisions cannot, however, be applied retroactively to existing buildings erected before the Code came into effect. For such buildings I am advised that a municipality has, through the

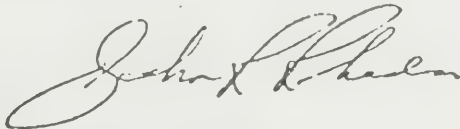


All Municipal Clerks

application of a Maintenance and Occupancy By-law passed under the provisions of Section 36 of The Planning Act, the power to require that safety features be installed, providing the by-law prescribes an appropriate standard. Such a standard may be derived from the standard prescribed in the Ontario Building Code, or an alternative standard which the municipality deems to be appropriate.

Since this is a subject of significant public concern, I would be obliged if you could bring to your Council's attention the powers described above which are available to a municipality in ensuring protection for children occupying suites in multi-storey buildings. Your Council may deem it appropriate to amend its Maintenance and Occupancy By-law to provide for the requirement of such safeguards.

Yours truly,

A handwritten signature in dark ink, appearing to read "John Rhodes". The signature is fluid and cursive, with a large initial "J" and a stylized "R".

John Rhodes,  
Minister.



### SUBSECTION 3.6.2. WINDOWS

3.6.2.1. Unless otherwise permitted, every room used for sleeping in any *building* and every principal room such as living room, dining room or combination thereof in *dwelling units*, shall be provided with windows in conformance with Subsection 9.7.

3.6.2.2.(1) Except as provided in Sentence (2), in Group C *occupancies* any window located more than 6 ft above the adjacent finished ground level and that extends to within 30 in. of the adjacent floor of each *storey* shall have fixed glazing unless any part of the window that opens below that height is protected by a *guard*.

(2) In a Group C *major occupancy apartment building* all opening windows in *dwelling units* shall comply with the requirements of Sentence (3) for,

- (a) latching or automatic engaging devices to control the window opening; and
- (b) screens

(3) The latching or automatic engaging devices and screens required in Sentence (2) shall comply with the requirements of one of the following, all revised to 1 May, 1975,

- (a) CGSB 63 GP-2b (1974), "Windows, Extruded Aluminum, Vertical and Horizontal Sliding, Medium Duty";
- (b) CGSB 63 GP-3b(1974), "Windows, Extruded Aluminum, Vertical and Horizontal Sliding, Standard Duty";
- (c) CGSB 63 GP-4a(1971), Amendment No. 1, Jan. 1975, "Windows, Sashless, Horizontal Sliding";
- (d) CGSB 63 GP-5a(1970), Amendment No. 2, Jan. 1975, "Windows, Steel, Vertical and Horizontal Sliding, Standard Duty"; or

- 
- (e) CGSB 63 GP-6(1970), Amendment No. 2, Jan. 1975, "Windows, Steel, Vertical and Horizontal Sliding, Medium Duty".

(4) Alternative devices which do not reduce the degree of safety provided by Sentences (2) and (3) may be permitted



SCHEDULE "E"

THE OMBUDSMAN ACT, 1975

Delegation of Powers

In exercise of the power conferred upon me by Section 27 of The Ombudsman Act, 1975, I hereby delegate unto THOMAS P. O'CONNOR, who is employed by me as Deputy Legal Officer, all the powers of investigation conferred upon me by The Ombudsman Act, 1975, other than the powers conferred by Sections 18, the power to give a governmental organization or person the opportunity to make representations pursuant to Section 19(3), the powers conferred by Section 20(2), the power of delegation under Section 27 and the power to make a report under the Act.

Given under my hand at Toronto, this 28th day of February, 1977.

Beatrice Donnelly  
Witness

Arthur Maloney, Q.C.  
Ombudsman






THE OMBUDSMAN ACT, 1975  
Delegation of Powers

In exercise of the power conferred upon me by Section 27 of The Ombudsman Act, 1975, I hereby delegate unto ROBERT C DAVIDSON, who is employed by me as an Investigator, all the powers of investigation conferred upon me by The Ombudsman Act, 1975, other than the powers conferred by Sections 18 and 19(1), the power to give a governmental organization or person the opportunity to make representations pursuant to Section 19(3), the powers conferred by Section 20(2), the power of delegation under Section 27 and the power to make a report under the Act.

Given under my hand at Toronto, this 28th day of February, 1977.

William D. Donnelly  
Witness

  
Arthur Maloney, Q.C.  
Ombudsman





Speaker's Chambers

Room 188

Parliament Buildings  
Toronto, Ontario  
M7A 1A2

BOARD OF INTERNAL ECONOMY

March 10, 1977

Mr. J.A. Renwick, MPP,  
Chairman,  
Select Committee on the  
Office of the Ombudsman,  
Room 475,  
Legislative Building,  
Queen's Park

Dear Mr. Renwick,

Re: 1977-78 Estimates of the  
Office of the Ombudsman

I enclose a copy of Part III of the Minutes of Meeting #2/77 of the Board of Internal Economy, outlining the decisions of the Board with respect to its review of the above Estimates.

I am also attaching a copy of a letter dated February 25, 1977, addressed to the Ombudsman by the Chairman of Hickling-Johnston Ltd. and tabled by Mr. Maloney at Meeting #2/77. You will note from the Minutes that out of five proposals for a Management Study made by Hickling-Johnston Ltd., the Board decided to refer three to your Select Committee for consideration.

Yours sincerely,

A handwritten signature in cursive script that reads "Russell D. Rowe".

Russell D. Rowe,  
Speaker

Enc.  
cc: Mr. A. Maloney, Q.C.,  
Ombudsman  
R.ets



EXTRACT FROM  
MINUTES OF MEETING #2/77 OF THE BOARD OF INTERNAL ECONOMY

4.

PART III:     HELD IN ROOM 363, LEGISLATIVE BUILDING, ON  
                  TUESDAY, MARCH 8, 1977, AT 2.00 P.M.

PRESENT:

Members

Hon. R. Rowe, Speaker, Chairman  
Hon. R. Welch, Q.C.  
Hon. L. Henderson  
Mr. I. Deans, MPP  
Mr. L. Maeck, MPP  
Mr. J. Breithaupt, MPP

Secretariat of the Board

Mr. R. Fleming, Director of Administration  
Mrs. E. Storton, Recording Secretary  
Mrs. E. Stephenson, Administrative Coordinator

Legislative Assembly Staff

Mr. R. Lewis, Q.C., Clerk of the House  
Mr. J. Miggiani, Finance Officer  
Mr. W. Wilson, Personnel Officer

ABSENT:

Hon. J. Auld

DECISIONS OF THE BOARD

tem 2     Review of the 1977-78 Estimates of the Office of the Ombudsman:

Moved by Mr. Henderson, seconded by Mr. Deans and agreed that an amount of \$3,560,000. be included for the Office of the Ombudsman in the 1977-78 Estimates of the Government of Ontario subject to the following provisions:

(a) Salaries:

That the proposed salaries for employees of the Office of the Ombudsman be equated with those of the Ontario Civil Service and the Office of the Assembly.



(b) Anti-Inflation Board:

That the Ombudsman make the necessary submissions to the Anti-Inflation Board.

(c) Administrative Procedures:

That with respect to the five areas referred to on Page 2 of a letter dated February 25, 1977, addressed to the Ombudsman by the Chairman of Hickling-Johnston Ltd., and tabled by Mr. Maloney at #2/77:

First - Salary Administration

See Item 2(a) above.

Second - Adoption of a Set of Administrative Standards

The Manual of Administration of the Government of Ontario shall apply.

Third - Efficiency of Processing Complaints

Fourth - Establishment of Priorities in Complaint Treatment

Fifth - Establishment of Reporting Relationships & Delegation of Responsibilities

That these latter three areas be referred to the Select Committee on the Ombudsman for review.

OTION TO ADJOURN:

Moved by Mr. Deans, seconded by Mr. Breithaupt and agreed that the meeting adjourn.

arch 9, 1977  
ts

  
Chairman





Management Consultants

Hickling-Johnston Limited,  
415 Yonge Street,  
Toronto, Ontario M5B 2E7  
Telephone (416) 366-2811

Hickling-Johnston

February 25, 1977.

RECEIVE

FEB 28 1977

Mr. Arthur Maloney, Q.C.,  
The Ombudsman of Ontario,  
65 Queen Street West,  
Toronto, Ontario.

OFFICE OF THE  
OMBUDSMAN - ONTARIO

Dear Mr. Maloney:

The next year will be an important one for the Office of the Ombudsman, because it will be one of consolidation of the roles and functions developed over the past year and one half, and one of careful planning of future development of the Office.

It is important to recognize that the problems of management inherent in a new and untried organization of some 120 people are of major proportions. You need the assurance that administration of the Office is efficient, that you have the ability to plan staff and facilities according to projected case volume, and that your administrative procedures are consistent with the best practice in government and private organizations. Substantial changes in the way you are organized, in systems and procedures, and in methods of planning, are required.

These needs have been clearly evident in our review of your salary administration. Indeed, many of your officials have described difficulties they face in their day-to-day affairs which reflect weaknesses in coordination and in reporting relationships. There is widespread agreement that basic questions of organization need to be faced, and faced soon.

We have formed the opinion, as well, that management problems are placing nearly impossible demands on you as Ombudsman. These threaten to overwhelm you with the details of administration and impair your ability to provide leadership to the evolution of the Office.



Mr. A. Maloney

=2=

February 25, 1977

It must be clearly recognized that the management problems described here are entirely consistent with a new function and a new organization. But simply put, now is an appropriate time to address them directly and comprehensively.

There are five specific areas which require substantial adjustment. The first is salary administration which will be firmly in hand by the end of March. The second is the adoption of a set of administrative standards which ensure that your practices are consistent with those of comparable organizations. The third is the efficiency with which your office processes complaints. The fourth is the way in which you approach priorities in complaint treatment. This is particularly critical to the future pattern of expenditures, because increases in the volume of complaints inevitably entail increases in costs -- regardless of how efficiently they are processed. And the fifth is the pattern of reporting relationships and delegation of responsibilities through which the first four items are routinely addressed. This is a matter of organization.

Each of these areas could be addressed in a piecemeal fashion but that would not be, in our opinion, the most efficient and effective way. One of the most important lessons learned in public administration in this decade is that management improvement works best when it fully involves middle and senior managers. What this means in practice is that analysis of administrative problems and the implementation of corrective measures can proceed at the same time.

The program of management improvement I have discussed with you will give the Office of the Ombudsman the ability to decide among the various priorities available within the Act, and permit the Office to manage the flow of complaints thereby arising in a manner consistent with the financial limitations the Legislature may approve. This will give both you and Members the assurance that the Ombudsman is addressing the most important



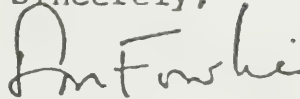
Mr. A. Maloney .

=3=

February 25, 1977

needs of the Ontario community, and doing so in the most efficient manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Fowke". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Donald V. Fowke,  
Chairman.

DVF/smh



SCHEDULE "G"

The Dissent of Larry Grossman, M.P.P.

Second Report of the Select Committee on the Ombudsman

Recommendation #1:

I dissent from this Recommendation for the following reasons:

1. The agreement between the Ombudsman and the Minister of Housing expressly contained the word "adversarial". While the Committee has heard from the Ombudsman, it has not asked for and has not received comment from the Minister of Housing. Without seeking from one of the two main parties to the agreement any comment with regard to what may, to that party, be a serious deletion or a change to the original agreement, the Committee may be inadvertently recommending a change which may nullify an intended agreement. Contrary to the language in the report, the removal of the words "adversarial nature" perhaps would not "give effect to the agreement", but rather pervert it.
2. The Committee's function ought to be to respond to recommendations of the Ombudsman and comment upon the response of Government. In these peculiar circumstances, the Committee approved the ultimate actions of both the Ombudsman and the Government (i.e. - by approving the agreement they had reached). Because of unfortunate problems which have developed, the Committee now purports to "re-open" or instigate new and possibly different action. The Committee is not charged with this responsibility, and ought not to re-involve itself at this time.
3. The recommendation of the Committee flows from a request of the solicitor for the land-owners, made to the Committee to assist him in the face of rulings made by the Commission which he did not like. That Commission is now charged with the task pursuant in part to the explicit agreement of the Ombudsman Committee that that Commission undertake that responsibility. The Commission must now discharge its responsibilities within the confines of the Public Inquiries Act and the Order-in-Council. The Committee ought not intervene to attempt to alter or change the rules in response to rulings made from time to time by the Commission. To do so, would be to invite various of the parties to the Hearing before the Commission to use the Committee as a Court of Appeal each time a ruling is made adverse to their interests by the Commission.





2.

4. The very issue dealt with in this Recommendation is now being litigated. It would be improper and unfair to all parties to comment upon, attempt to change or alter the very words now being tested and interpreted by the courts.



---

Larry Grossman, M.P.P.  
St. Andrew - St. Patrick







CASAN  
XC 99  
- 051



# **THIRD REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN**

**1977**

TABLED IN THE LEGISLATIVE ASSEMBLY BY  
THE CHAIRMAN OF THE COMMITTEE  
MICHAEL N. DAVISON, M.P.P.

1st Session 31st Legislature

26 Elizabeth II



November 25 , 1977.

TO:

THE HONOURABLE JOHN E. STOKES  
Speaker of the <sup>2</sup>Legislative Assembly of the  
Province of Ontario

Sir,

We, the undersigned members of the Committee appointed  
by the Legislative Assembly of the Province of Ontario on  
Tuesday, July 12, 1977, have the honour to submit the attached  
third report.

*Michael N. Davison*

MICHAEL N. DAVISON, M.P.P.  
Hamilton Centre  
Chairman

*Margaret Campbell*

MARGARET CAMPBELL, Q.C., M.P.P.  
St. George

*John Eakins*

JOHN EAKINS, M.P.P.  
Victoria-Haliburton

*Robert Elgie*

ROBERT ELGIE, M.D., M.P.P.  
York East

\* PATRICK LAWLOR, Q.C., M.P.P.  
Lakeshore

*Ross McClellan*

ROSS McCLELLAN, M.P.P.  
Bellwoods

*Gordon I. Miller*

GORDON I. MILLER, M.P.P.  
Haldimand-Norfolk

*George Taylor*

GEORGE TAYLOR, Q.C., M.P.P.  
Simcoe Centre

*John Turner*

JOHN TURNER, M.P.P.  
Peterborough

*Osie F. Villeneuve*

OSIE F. VILLENEUVE, M.P.P.  
Stormont-Dundas-Glengarry

\* Due to the timing of his appointment to the Committee, the member  
from Lakeshore felt he could not sign the report.





MEMBERS OF THE SELECT COMMITTEE  
ON THE  
OMBUDSMAN

MICHAEL N. DAVISON, M.P.P., Chairman	Hamilton Centre
MARGARET CAMPBELL, Q.C., M.P.P.	St. George
JOHN EAKINS, M.P.P.	Victoria-Haliburton
ROBERT ELGIE, M.D., M.P.P.	York East
PATRICK D. LAWLOR, Q.C., M.P.P.	Lakeshore
ROSS McCLELLAN, M.P.P.	Bellwoods
GORDON I. MILLER, M.P.P.	Haldimand-Norfolk
GEORGE TAYLOR, Q.C., M.P.P.	Simcoe Centre
JOHN TURNER, M.P.P.	Peterborough
OSIE F. VILLENEUVE, M.P.P.	Stormont-Dundas- Glengarry

---

JOHN P. BELL	Counsel to the Committee
ALEX MCFEDRIES	Clerk of the Committee



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## INTRODUCTION

On Tuesday, July 12, 1977, on motion by Mr. Welch, seconded by Mr. Davis, it was ordered,

"That, a Select Committee of this House be appointed to continue to review from time to time the reports of the Ombudsman as they become available, and, as the Committee deems necessary, pursuant to section 16(1) of The Ombudsman Act, 1975, formulate from time to time general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act, to report thereon to the Legislature and to make such recommendations as the Committee deems appropriate.

And that the Select Committee have authority to sit during recesses and the interval between Sessions and have power to employ such staff as it deems necessary and to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel the attendance before the said Select Committee of such persons and the production of such papers and things as the Committee may deem necessary for any of its proceedings and deliberations for which the Honourable the Speaker may issue his warrant or warrants."

On the 20th of July, 1977, the Ombudsman presented his Second Report (July 1976 - March 1977) to the Speaker of

the Legislative Assembly.

The Committee, on that same day, held its first organizational meeting. At that time it re-appointed as its counsel, Mr. John P. Bell of the law firm Shibley, Righton & McCutcheon. Thereafter the Committee held two other organizational meetings on July 27, 1977 and August 3, 1977 wherein the scope of its inquiry was defined with respect to issues raised in the Ombudsman's Second Report and any other issues which the Committee considered necessary. Thereafter the Committee met for 20 sessions commencing on August 3, 1977 and ending on October 13, 1977.

The Committee lost the services of one of its most valuable members in August when James A. Renwick, Q.C. suffered a heart attack. Patrick D. Lawlor, Q.C. was named to the Committee to fill the vacancy left originally as a result of Mr. Renwick's state of health.

At page 5 of its Second Report to the Legislative Assembly this Committee, referring to the Ombudsman's First Annual Report stated:

"That the Ombudsman and his staff were able to accomplish all that is referenced in the Report is a testimony to the effort, dedication and enthusiasm of the Ombudsman and each and every member of his staff. In a relatively short period of time the Ombudsman has created and oversees an operation performing Ombudsman



functions unequalled in substance and in volume in the world. The effect of the presence of this office has already had a significant influence on government, members of the Legislative Assembly, and the people of the Province of Ontario.

The Committee wishes at this time to affirm its support for the concept of the office of the Ombudsman in Ontario. The Committee recognizes the significant contribution that the Ombudsman has and will continue to make by serving the people of Ontario in matters where they consider themselves to be adversely affected by government or its agencies. The comments and observations of the Committee in this Report are intended to assist the Ombudsman in the performance of his functions in the future so that difficulties and obstacles encountered by him during the existing evolutionary phase of his office, may be avoided, and that the process of his office and the functions which he must perform will not be delayed or frustrated".

The Committee is of the opinion that these comments are again applicable to the Ombudsman and his staff. The Committee wishes to assure the Ombudsman and the members of the Legislative Assembly that the comments, observations and recommendations made

by it in this Third Report are intended to assist the Ombudsman and his staff to continue to develop and to improve the performance of Ombudsman's functions, required under The Ombudsman Act, 1975.

The foregoing Third Report deals with matters which the Committee has considered and reviewed during the sessions since July 20, 1977. The Report also contains such recommendations as the Committee has deemed appropriate in the circumstances. For convenience, the recommendations are numbered where they appear in the text of the Report and are summarized in Schedule "A" which forms part of this Report.

## PART I

### SECOND REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

On the 28th of March, 1977, the Chairman of the Select Committee on the Ombudsman tabled its Second Report with the Speaker of the Legislative Assembly. When the 30th Legislature was dissolved, this Second Report was scheduled on the Order Paper for debate but had not yet been debated.

The Committee's Second Report contains a total of thirty (30) recommendations some of which called for certain action and response from the Ombudsman and his office and/or a particular governmental organization. Those recommendations were reviewed and considered by this Committee during its sessions referenced by this Report. They are identified under the appropriate sections of the remainder of this Report with the responses of the Ombudsman and/or governmental organization and for convenience to the members, they are summarized in Schedule "B" which is part of this Report.

There are remaining some Parts of the Committee's Second Report, including recommendations, which have not been considered again by it, or which in any event, the Committee considers significant enough to warrant debate in the House. These Parts are: Part I, Part IV, Part V, Part VI, and Part VII.

It is apparent to this Committee that hereafter its Reports to the Legislature must be studied and debated by it with reference to its preceding reports and to the Reports of

the Ombudsman referenced thereby. This is due to the fact that a continuing and meaningful dialogue has emerged between the Committee and the Office of the Ombudsman respecting the operation, development, and improvement of his office. A similar type of dialogue has also emerged between the Committee and various governmental organizations respecting their relationship with the Office of the Ombudsman. This dialogue as time progresses, may very well cover the span of three (3) Select Committee Reports and three (3) or more Ombudsman Reports on one subject. General rules for the guidance of the Ombudsman is but one example of such a subject.

The Committee therefore perceives that the Third Report of the Select Committee on the Ombudsman and all succeeding reports made by it will essentially perform two functions for the members. It will inform the members of its findings with appropriate recommendations on isolated non-recurring issues found within a report of the Ombudsman and secondly, it will inform the members, with all appropriate recommendations, on issues which for various reasons, require continuing review by the Committee in accordance with its order of reference.

PART II

SECOND REPORT OF THE OMBUDSMAN  
JULY 1976 - MARCH 1977

The Committee considered the Ombudsman's Second Report, under three basic general categories:

(A) Specific recommendations and observations made by the Ombudsman respecting one and/or a group of governmental organizations wherein recurring matters of concern were perceived by him;

(B) Specific case summaries found in the Second Report wherein the Committee considered that certain issues raised by the particular complaint summary required a more detailed review. This category included, for the first time, four (4) separate recommendations made by the Ombudsman pursuant to Section 22 of The Ombudsman Act which were denied by the particular governmental organization. These four (4) cases are discussed in a special section later in this Part;

(C) Matters pertaining to the general operation of the Office of the Ombudsman which included a review by the Committee of the procedures and policies adopted by him and his office, to carry out the Ombudsman's various functions under The Ombudsman Act, within the period referenced by his Second Report. The Committee also reviewed under this category certain observations and

recommendations made by the Ombudsman respecting the present status of the organization and operation of his office.

(A) NORTH PICKERING PROJECT INQUIRIES

In Part I (pages 1-4) of the Committee's Second Report it expressed concern over the delay in the proceedings of the Commission of Inquiry appointed under Order-In-Council 2959/76, as amended from time to time, and concern over the fact that the said Order-In-Council may be capable of an interpretation which could limit or restrict a full and exhaustive investigation of all relevant issues as contemplated by the agreement entered into between the Ombudsman and the Minister of Housing on October 1, 1976 and all those who were either privy to it, endorsed or concurred in it (see Schedule "B" Second Report of Select Committee, pages 64-66). Accordingly, as its first recommendation in its Second Report, the Committee stated that:

"The Order-In-Council again be amended to remove any ambiguity as to the meaning of 'adversarial nature' and so as to give effect to the agreement reached on October 1, 1976 as intended by this Select Committee, by removing the sentence 'all matters referred to this Commission shall be heard and determined in proceedings of an adversarial nature' from Order-In-Council, OC 2959/76" (Larry Grossman, M.P.P. dissenting).



In his Second Report, the Ombudsman summarized certain events which have transpired from July, 1976 to June, 1977. This summary describes certain developments in the North Pickering case and more particularly describes developments with respect to those issues which the agreement of October 1, 1976 intended to be considered by the Commission of Inquiry. These developments, as perceived and reported by the Ombudsman are said by him to be cause for great alarm. The Committee understands them to be in the following categories:

- (a) The original appointment of the members of the Royal Commission by Order-In-Council 2959/76 in October 1976 by the government without consultation with the Ombudsman; (see Second Report of Select Committee pages 64-70)
- (b) Certain rulings made by the Royal Commission touching the procedure and substance of the inquiry which resulted in a stated case by the Commission to the Divisional Court of the Supreme Court of Ontario and a subsequent appeal from the decision of that court to the Court of Appeal of Ontario, by counsel for the five (5) land acquisition agents;
- (c) The resignation on April 15, 1977 of one of the Commissioners for reasons apparently due to his fundamental disagreement with the manner in which the majority of the Commissioners were interpreting and carrying out their responsibilities as contemplated by the Order-In-Council;

(d) Withdrawal by the former landowners referenced by Order-In-Council 2959/76 and their counsel from any voluntary participation in the Royal Commission proceedings;

(e) The intention by the Royal Commission to resume its hearings in August 1977 regardless of the extent, if any, of the participation of the said former landowners and their counsel;

(f) The absence of any meaningful progress of the Commission proceedings since October 1976.

On June 16, 1977 the Ombudsman received a letter from counsel to the said former landowners expressing his clients' concern about the nature and substance of the Royal Commission proceedings. That letter contained a request of the Ombudsman, by counsel on behalf of his clients, that the Ombudsman exercise his powers pursuant to the provisions of The Ombudsman Act and cause an investigation, or a further re-investigation, to be made of the complaints and claims of those landowners. In other words, the Ombudsman was asked to commence his own investigation or re-investigation at the same time as and without regard to the Royal Commission proceedings.

On June 27, 1977 the Ombudsman wrote to the Honourable John Rhodes, Minister of Housing, reporting on the landowners' request, and seeking the Minister's views on the question of the Ombudsman's jurisdiction to accede thereto. As of the date when the Ombudsman tabled his Report with the Speaker of the House a response to that letter had not been received from the Minister.



In summary, the Ombudsman states at page 94 of his Second Report:

"It is my view that the Commission as it is presently constituted should be disbanded forthwith and a workable alternative remedy should be arrived at by the Minister of Housing and me, so as to enable justice to be done to those who are established to have suffered hardship as a result of the land acquisition procedure in North Pickering. Simple justice demands that this action be taken forthwith".

The Minister of Housing and his counsel, Mr. Robert Armstrong, counsel for the said property owners, Mr. Ian. J. Scott, Q.C., and counsel for the five land acquisition agents, Mr. John Sopinka, Q.C., appeared before the Committee at its request, to comment on those matters raised by the Ombudsman in his Second Report, and in his letter to the Minister of Housing dated June 27, 1977.

The Minister of Housing rejected the Ombudsman's conclusions referable to the delay experienced by the Commission of Inquiry since October 1976. He further rejected the Ombudsman's recommendation that the Commission be disbanded on the grounds that it would be a complete repudiation of the agreement which he negotiated and settled with the Ombudsman on October 1, 1976 and on the grounds that:

"To disband the Commission at the urging of the Ombudsman for reasons of delay chiefly caused by his appointees would be grossly unfair to Mr. Sopinka's clients, the Ministry of Housing, the public and perhaps most of all Messrs. Donnelly, Grant and Marriott who have not been really given a chance to perform their function.

Indeed if the Commission were to be disbanded without unanimous agreement among all parties, we would be back in the position we were in about one year ago".

The Minister of Housing also rejected the request of the former property owners of the Ombudsman to cause his own investigation to be made.

Counsel for the five (5) land acquisition agents rejected the Ombudsman's recommendation on the ground that the Government of Ontario lacked the authority under The Public Inquiries Act or under any other common or statutory law to disband any Royal Commission. In any event, he indicated that disbanding the Commission would be a breach of the agreement of October 1, 1976 which he concurred in on behalf of his clients.

He advised the Committee that having regard to the decision of the Court of Appeal from the decision of the Divisional Court of the Supreme Court of Ontario, he did not foresee the Commission experiencing any difficulty in the interpretation of the phrase "adversarial in nature" which is the subject matter of the first recommendation in the Second Report

of this Committee. He anticipates that all relevant evidence would not be received in respect to the issues to be investigated by the Commission without restriction by the ordinary rules of evidence in civil proceedings. The Committee understands that the Minister of Housing as well shares these opinions.

Counsel for the former landowners, on behalf of his clients, supported the Ombudsman's conclusions and recommendations. In his opinion the Commission as presently constituted, is inflexible, legalistic and narrow in its approach to the matters that were intended to be considered. He indicated, in his opinion, that the Commission of Inquiry is restricted by the present Order-In-Council and/or by its own manner of interpretation of that Order-In-Council.

At the suggestion of Mr. Renwick, counsel for the Minister of Housing, counsel for the former landowners and counsel for the five land acquisition agents agreed to a meeting to discuss a resolution of some of the outstanding issues which seem to be preventing the Commission from carrying out its function and to prepare a memorandum of understanding as to the intention of the agreement dated October 1, 1976 which memorandum could be submitted to the Commission of Inquiry for its assistance.

The three counsels and the Minister of Housing returned to the Committee on August 11, 1977 to inform it that no matters in issue had been resolved. At the same time they re-affirmed their respective positions respecting the Commission of Inquiry and the Ombudsman's comments.

However, the Minister of Housing and the Ombudsman agreed to meet subsequently to discuss whether or not any matters of disagreement were capable of being resolved by them for the purpose of assisting the Commission, as presently constituted, to carry out its intended functions and responsibilities. The Minister and the Ombudsman were advised that if any matters of disagreement were resolved by them or if they agree to cause something to be presented to the Committee for its assistance, they should so report to this Committee. The Committee understands that since August 11, 1977 and prior to November 7, 1977 counsel representing the Ministry of Housing invited the Commission to appoint its own counsel. The Committee has received no further information respecting the results of any meetings which have been held.

The Commission's hearings resumed November 7th, 8th and 10th, 1977. During those days evidence was received only with respect to the allegations of misconduct of the five land acquisition agents and only from the five agents. They were questioned by their counsel and some or all of the Commissioners. They were not examined by counsel representing the Ministry of Housing.

On November 10, 1977, the Commission heard submissions of counsel appearing respecting the issues relevant to the evidence the Commission has received. The Committee understands that on November 10th the Commission adjourned and is now preparing its report. It is unlikely that the Commission will be resumed.

The Commission of Inquiry did not on its own initiative take any steps to call evidence with respect to the issues relevant to the complaints of the former landowners as contained in the said Order-In-Council which issues include but are not limited to the following:

- (1) All circumstances of each particular case;
- (2) Misleading statements made by representatives of the Ministry of Housing to the said former landowners;
- (3) Inadequate appraisals prepared by or on behalf of the Ministry of Housing;
- (4) Misunderstandings based upon reasonable grounds in the circumstances of the particular case.

Nor did the Commission on its own initiative take any steps to call evidence with respect to the issues relevant to the property acquisition agents other than that which is referred to above.

In the Committee's opinion, the Commission cannot submit a substantive report on all of the issues contained in and referenced by the said Order-In-Council, the agreement dated October 1, 1976 and by all parties who were either privy to, endorsed or concurred in that agreement. Any report submitted by the Commission will be of little or no assistance to the Government or the Legislature for any purpose related to the matters affecting the former landowners and the property acquisition agents. Such



a report would also be capable of attack by persons affected of the type and substance as launched by counsel on behalf of the five land acquisition agents in respect of the Ombudsman's "North Pickering" Report; that is, an action commenced in the Divisional Court of the Supreme Court of Ontario for a declaration that the Commission's report is null and void and of no legal force and effect. There has not been an inquiry as intended or expected by all those involved, of the relevant issues.

The Committee is of the opinion that all those who were either privy to, endorsed or concurred with the agreement dated October 1, 1976 have a duty to themselves, the Government, the Legislature and the people of the Province of Ontario to see that the issues contained in and referenced by the said Order-In-Council and as contained in the agreement dated October 1, 1976 are fully examined and thoroughly reported upon. If the Commission of Inquiry, as presently constituted, has terminated its proceedings thus falling short of its purpose as intended by all those involved, and as they have publicly confirmed from time to time, then a new Commission or other forum should be appointed forthwith with powers and responsibilities expressed in unambiguous language. The Order-In-Council, to avoid any further misunderstanding, any further delay, any further involvement by the courts, and any loss of public confidence, should have annexed thereto the agreement dated October 1, 1976 and the transcript of this Committee's proceedings dated October 1, 1976.

Accordingly, this Committee recommends that the Government cause the Commission's report to be submitted forthwith

and that immediately thereafter a Commission of Inquiry or other suitable forum be appointed with terms of reference identical to the agreement between the Minister of Housing and the Ombudsman dated October 1, 1976, such Order-In-Council to append as schedules thereto the said agreement and the transcript of the Select Committee's proceedings dated October 1, 1976. Further the Order-In-Council to provide that the Commission or forum actively inquire into the issues relevant to the former landowners and the property acquisition agents, that the Commission or forum retain its own counsel to assist it in the investigation, preparation and presentation to it of all relevant evidence. With respect to the phrase "adversarial nature", it should be given the identical context in the Order-In-Council as it is given in the agreement of October 1, 1976 as interpreted by the Court of Appeal in its judgment released April 1, 1977.<sup>(1)</sup>

This recommendation would not be necessary nor would a delay of some 16 months have ensued had the Ombudsman's original report on "North Pickering" been capable of withstanding an action in the Supreme Court of Ontario and the criticisms of it by those affected thereby. The Minister of Housing would, in all probability, have had no alternative but to accept the Ombudsman's opinions and recommendations if they had been supported in every respect by the Ombudsman's investigation. It is regrettable that an investigation of this magnitude was undertaken by the Ombudsman's office during the period of its creation, by persons with no previous experience and no knowledge and understanding of the functions of the Ombudsman and the procedures required thereby.

Rather, this recommendation is made to assist the Government and the Legislature to resolve, and perhaps rectify once and for all, those matters wherein the conduct of the public business may have caused unnecessary and unwarranted losses to certain citizens of the Province of Ontario. To do less would be impractical. To do nothing would be irresponsible.

(B) EXPANSION OF OMBUDSMAN'S JURISDICTION

In his Second Report the Ombudsman recommended that his jurisdiction be expanded to cover complaints respecting local or municipal governments. The organizations included by the Ombudsman in this recommendation are municipal police forces, private hospitals, universities, Children's Aid Societies, and Boards of Education.

Approximately eleven per cent (11%) of the total complaints closed by the Ombudsman's office as of March 31, 1977 were within this category. That notwithstanding, the Ombudsman does not foresee any appreciable increase in the size of his operation if jurisdiction in this area was expanded.

The Committee recognizes this recommendation as having implications respecting the concept of Ombudsman in the Province of Ontario. It is of the opinion, if the Ombudsman's jurisdiction were expanded in this area, a profound effect on the Ombudsman's office as presently constituted would result. For example, in the Committee's opinion the present workload, backlog of cases, fiscal requirements and staff size of the office all would at



least increase by approximately one-third. This is confirmed further when it is recognized that the Ombudsman's office in Ontario assumes an active role in its receipt of complaints.

Accordingly, the Committee defers any formal comments and recommendations to the Legislature on this matter until such times as studies are completed by others referable to the operation and organization of the Ombudsman's office and until the Committee has had an opportunity of studying in person, other jurisdictions, who have had, for a number of years, the experience of processing complaints in this category.

(C) DECISIONS OF GOVERNMENTAL ORGANIZATIONS

The Ombudsman in his Second Report recommended that the government, perhaps in consultation with his staff, undertake a study to ascertain the identity of decisions of governmental organizations which can be "appealed" with a view to ensuring that sufficient and understandable directions are given to the person affected by the decision concerning rights of appeal. In addition, the Ombudsman recommended that once this study is undertaken the government introduce legislation requiring governmental organizations making appealable decisions to clearly inform citizens of appeal rights. In the Committee's opinion, these recommendations require more clarification as to the definition of an appealable decision and as to whether or not decisions of governmental organizations governed by The Statutory Powers Procedure Act were to be included therein.

The Ombudsman's office has agreed to define more precisely these recommendations and to provide as many examples as possible of governmental organizations within this category from the experience of the office to date. The Deputy Attorney General agreed that such a study would be worthwhile and further agreed to meet with representatives of the Ombudsman's office when the additional information has been prepared.

The Committee is of the opinion that a recommendation to the substance of this subject is premature without the benefit of the further material from the Ombudsman's office and the Attorney General's comments in respect thereto. The Committee does, however, recommend that the Ombudsman and his office complete the matters outstanding with respect to this recommendation as quickly as possible and thereafter conduct meetings with the Ministry of the Attorney General. (2)

(D) CORRECTIONAL SERVICES REPORT

This Report was completed by the Ombudsman's office in draft form in May, 1977 and then delivered to the Deputy Minister of Correctional Services. It was the Ombudsman's intention in delivering this draft report to the Deputy Minister, to allow the Ministry in its discretion, to specify those parts of the report which it perceives as possibly having an adverse effect on the Ministry or Ministry personnel in respect of which it wishes an opportunity to make representations. It was expected that the report was to be returned to the Ombudsman with the Ministry's comments and that thereafter it would be finalized

and presented to the Minister of Correctional Services and other appropriate officials.

On October 13, 1977 the Ombudsman when he appeared before the Committee informed it that on that day five (5) letters pursuant to Section 19(3) of The Ombudsman Act were mailed or delivered to five ex-superintendents and that a similar letter was to be sent to the Deputy Minister and the Minister. The Committee is unsure whether the letters and procedure pursuant to Section 19(3) as referenced by the Ombudsman on October 13, 1977 are the same as that referenced by him at page 21 of his Second Report. In any event, the Committee is uncertain as to the basis of the Ombudsman's proceedings herein by providing a Ministry with a draft copy of a report thereby requiring it to decide which parts might have an adverse effect on the Ministry or Ministry representatives. This might be interpreted as an abrogation of the Ombudsman's duties pursuant to Section 19(3). The Committee, however, does not feel it is appropriate to make any further comment at this time until the "process" involving this Correctional Services Report has been completed.

The Ombudsman informed the Committee that he expects the Correctional Services Report to be completed by his office and sent to the Minister pursuant to Section 22 of The Ombudsman Act, by mid-November. At that time, he intends to give the Minister as long as he considers necessary to respond to the Report. Accordingly, the Ombudsman was unable to advise the Committee whether or when the Report would be tabled by him in

the Legislature pursuant to the procedure provided by Section 22(4) of the Act.

The Committee understands that the Minister of Correctional Services intends to make the report public on his own. In that event, the Ombudsman would then table the report in the Legislature and it would thereafter be reviewed and considered by the Committee.

The Committee considers the Correctional Services Report to be of great importance not only respecting issues affecting that particular Ministry but affecting the concept and operation of Ombudsman functions as contemplated by The Ombudsman Act, 1975. Accordingly, the Committee recommends that the Minister of Correctional Services make that report public as soon as it is received in final form in order that it might be reviewed and subsequently reported upon to the House by it.<sup>(3)</sup>

(E) BOARD OF INTERNAL ECONOMY

Part VIII of the Committee's Second Report (page 55), reviews three (3) areas referred to it for review by the Board of Internal Economy. These areas concerning the organization and operation of the Ombudsman's office are three (3) of the five (5) which Hickling-Johnston Limited, management consultants, recommended to the Ombudsman as requiring substantial adjustment (see Schedule "F", Second Report of the Select Committee pages 89-94). The Ombudsman has accepted the advice received from the Hickling-Johnston firm and in his Second Report comments that his office

entering its third year of operations "should be subjected to objective scrutiny by a professional consultant group". The Ombudsman has apparently reached this conclusion "in light of my concern that despite the ever increasing demands made on the office by the public, it is necessary to restrain our expenditures, especially in the area of full-time staff complement, and it was therefore imperative that our internal procedures ensure that the most efficient complaint handling methods were being used".

The Ombudsman requested of the Board of Internal Economy on March 8, 1977 sufficient funds to conduct the recommended management study of the three (3) areas referenced plus two others in the amount of \$75,000.00, such amount having been quoted to him by the Hickling-Johnston firm. The other two areas previously referenced have now been resolved by other means. The Committee understands the Board of Internal Economy to have deferred approval of any funds for a management study of the three remaining areas pending a review by the Select Committee of the overall question.

The Committee heard from representatives of the Hickling-Johnston firm as well as from the Ombudsman and his staff respecting the need for and general purpose of such a study. The Committee is of the opinion that the Ombudsman requires immediate professional assistance in the three areas referenced by the Board of Internal Economy. It is also of the opinion that there are other areas outside the three referenced, relating to the organization and operation of the Ombudsman's office requiring substantial "adjustment" and improvement. To permit the Ombudsman's office



to proceed any longer without such professional assistance would only, in the Committee's opinion, lead to a compounding of the problems presently in existence within the office. This would also profoundly affect the office's ability to serve the people of Ontario as intended by The Ombudsman Act, 1975.

The Ombudsman's office, pursuant to a direction by the Committee and in accordance with the required procedures of the Manual of Administration of the Government of Ontario, prepared a Feasibility Study For Management Consulting Services which was tabled with the Committee on October 12, 1977 and which is attached to this Report as Schedule "C". This study is an articulation by the Ombudsman's office of the problems presently experienced by the Ombudsman and his office, and the areas to which he and his staff believe the Management Consulting Service should direct itself and provide assistance.

The Committee has given the Ombudsman an expression of its opinion that a management study is necessary for his office and has urged him to follow the complete and proper tendering procedures as required by the said Manual of Administration attached to this Report as Schedule "D".

The Committee is mindful that assistance to the Ombudsman of this nature is required in part, because of the original policy of expansion within the Ombudsman's office, and in part because of the time spent by the office on all matters coming thereto, regardless of the Ombudsman's jurisdiction. A policy designed to establish an Ombudsman operation unequalled in

the world in the span of 18 months or less, of necessity creates major unforeseen difficulties both in the interpretation of the Ombudsman's functions within the Ontario Act and in the implementation of that function by persons with no previous experience.

The Committee commends such a study to the extent that it will assist the Ombudsman, and his office, to improve the implementation of various functions. However, it does not intend that such a study should serve to either interpret the functions of the Ombudsman or alter them in any way. Those are areas reserved for the Ombudsman, this Committee and the Legislature.

Accordingly, the Committee recommends that an amount be received and approved, as part of the Ombudsman's estimates, required to fund a complete management study for the Office of the Ombudsman by a firm or individual chosen by the Ombudsman in accordance with the required proposal and tendering procedures of the Manual of Administration.<sup>(4)</sup> It is understood that this recommendation is conditional upon the Board of Internal Economy's satisfaction that the required tendering procedure has been fully and fairly completed and that equal opportunity and treatment has been accorded to all those who did or might have tendered this project.

In the Committee's opinion the management consulting profession does not have an adequate knowledge or understanding of the concept of the Ombudsman in Ontario and his relationship to this Committee and to the Legislature. Such knowledge and understanding is critical before a thorough and useful management consulting service can be provided to the Ombudsman.

It is further recommended that the Ombudsman in choosing the management consultant best suited to perform the service intended, secure as a term of retainer, that the consulting firm upon completion of the study and service, furnish him with a "report" which will summarize the format of the study, the findings of the study, the recommendations, suggestions, clarifications, improvements and matters initiated within the study and presented to the Ombudsman's office; together with a summary of those recommendations, suggestions, clarifications, improvements and matters initiated by it which have been implemented by the Ombudsman; together with a summary of those recommendations which have not been implemented with reasons, if known to the management consultant.<sup>(5)</sup> It is also recommended that the Ombudsman table such report with the Committee forthwith upon receipt by the Ombudsman so that the Committee can continue its review and consideration of matters relating to the organization and operation of his office. <sup>(6)</sup>

(F) STATISTICAL ANALYSIS

The Committee reviewed with the appropriate representatives of the Ombudsman's office, Chapter 3 of the Ombudsman's Second Report being a comprehensive statistical summary of the performance of the office for the period referenced therein. The Committee perceived a number of trends referable to the office's ability to process the existing large volume of complaints. For example, the average duration that a file remains open within the Ombudsman's office has increased by twelve (12) days from the last



reporting period. The period of time required to process a non-jurisdictional complaint has risen from thirty-four (34) to fifty-seven (57) days. Complaints received which were only summarized within a file or wherein an explanation was given to the complainant of his or her circumstances, took up to eighty-six (86) days to close.

It is apparent to the Committee that the problems disclosed by this statistical analysis are part and parcel of the overall problems experienced by the Ombudsman's office for which he has requested expert assistance. The Committee, however, wishes to inform the Ombudsman that it is greatly concerned as to the trends evidenced by the statistical analysis. Accordingly, this Committee recommends that the Ombudsman specifically address the management consultant whom he may ultimately retain to these trends for specific attention and treatment as part of the management consulting process.<sup>(7)</sup>

The Committee wishes to assure the members of the Legislature that if as and when the report and results of the management study on the Ombudsman's office are delivered to it, it intends to review these matters once again and report thereon.

(G) OMBUDSMAN'S RESPONSE TO VARIOUS RECOMMENDATIONS  
MADE BY THE SELECT COMMITTEE IN ITS SECOND REPORT

In its Second Report, the Committee addressed a number of recommendations to the Ombudsman alone or in concert with one or more governmental organizations. In some cases these recommendations dealt with the working relationship between the

Ombudsman's office and the governmental organization or to issues arising out of a specific complaint against the particular governmental organization and reported upon by the Ombudsman. In other cases the recommendations were addressed to the Ombudsman and his staff referable to the operation and organization of his office.

The Ombudsman, both in his Second Report and before the Committee personally has made very positive and relatively immediate responses to a number of these recommendations. The Committee wishes to commend the Ombudsman and his staff for the manner in which they have responded. The Committee perceives this process of recommendation and response as the beginning of a continuing dialogue between it and the Ombudsman respecting many aspects of the organization and operation of his office which are of mutual concern.

The following are the recommendations made by the Select Committee in its Second Report, with page references, to which the Ombudsman has specifically responded together with comments and recommendations which the Committee at this time considers appropriate:

- #7            "The Ombudsman and the appropriate Workmen's Compensation Board Commissioners immediately commence discussions for the purpose of arriving at a mutually satisfactory working relationship".  
(page 12)

The Ombudsman reports that two meetings were held with representatives of the Workmen's Compensation Board to discuss this matter,

the result of which, procedures relative to the working relationship were clarified and agreement was reached on all outstanding issues. The Ombudsman perceives a continuing improvement in the working relationship between his office and the Workmen's Compensation Board and expresses hope that any future difficulties will be dealt with through discussions with Board representatives.

The Committee wishes to commend both the Ombudsman's office and the representatives of the Workmen's Compensation Board for effecting resolution of certain difficulties which existed and which hampered their working relationship.

The Committee considers the Ombudsman's response to Recommendation #7 to be a full response as well to Recommendations #8 and #9 of its Second Report. This was confirmed to the Committee by representatives of the Workmen's Compensation Board. Recommendations #8 and #9 being as follows:

#8            "The Ombudsman report in his next report to the Committee the status of the working relationship with the Workmen's Compensation Board and any improvements his office has noted with respect to its ability to process Workmen's Compensation Board complaints". (page 13)

#9            "The Workmen's Compensation Board make available to the Ombudsman's office all appropriate Commissioners, Appeals Administrators and operating staff for the purpose of providing

information relating to any matter that is being investigated by the Ombudsman". (page 14)

Recommendations contained in the Committee's Second Report to which the Ombudsman has responded both positively, favourably and completely are:

- #14 "The Ministry of Correctional Services be required to inform all inmates in provincial Correctional Institutions of the expansion of OHIP coverage available to inmates, by means additional to its information booklet". (page 25)
- #17 "The Ombudsman address himself to the question of further legislative amendment to provide for a privilege against censorship etc. for inmates incarcerated in provincial institutions who so wish to communicate with The Correctional Investigator responsible for investigating complaints emanating from federal penal institutions in his next report and formulate whatever recommendation he deems to be appropriate". (page 27)
- #27 "The Ombudsman be required to adopt the Manual of Administration as the manual of his office". (page 45)
- #28 "The Ombudsman's office use the purchasing facilities of the Ministry of Transportation

and Communications for the purchase of any additional or replacement automobiles required by his office". (page 46)

Recommendations contained in the Committee's Second Report to which the Ombudsman has not fully responded or which the Committee believes are best reserved for a more detailed review until the management study has been completed and reported upon to the Committee are:

#21 "The Ombudsman consider the Committee's observations concerning the Directorates within his office that perform, in any respects, independently of the other Directorates and concerning the backlog of cases which exist within his office with a view to ensuring that his entire staff be available for front-line duty to every complainant regardless of special category or status to ensure that all complaints can be brought to their appropriate conclusion within the shortest period of time". (page 34)

#22 "The Ombudsman consider its comments concerning a duplication of services within his office with a view to determining whether changes might be appropriate to expedite the process of dealing with complaints especially non-jurisdictional complaints". (page 34)



#24 "The Ombudsman consider the Committee's observations on personal contact with complainants with a view to improving firstly, the number of personal contacts made with complainants and secondly, adopting a procedure within his office to keep complainants informed, on a regular basis, as to the status of their complaint". (page 39)

Recommendation #23 of the Select Committee's Second Report states that:

"The Ombudsman give his policy relating to the amount of time spent by his office on non-jurisdictional matters all appropriate consideration and address himself to the question of whether complaints within his jurisdiction are being delayed as a result of this policy in his next semi-annual or annual report".

The Ombudsman advised the Committee that this policy has not changed since the First Annual Report. As the statistical analysis of Chapter 3 demonstrates, over fifty per cent (50%) of the total complaints received by the Ombudsman's office involve these types of complaints and the time spent has enlarged from thirty-four (34) to fifty-seven (57) days per file. The Committee is of the opinion that the time has now come to scrutinize most carefully this policy with a view to abridging the nature and extent of the time spent on these various non-jurisdictional cases.

To continue this policy will only cause further unnecessary delay to the large backlog of jurisdictional cases within the Ombudsman's office. Accordingly, the Committee recommends that the Ombudsman forthwith amend this policy so as to reduce the time his staff spends on this type of complaint. (8)

While the Ombudsman did not specifically respond to:

#25 "The Ombudsman consider the necessity of reporting to governmental organizations opinions in the strict wording of Section 22(3) to alleviate any possible doubt or challenge as to the Ombudsman's authority for making recommendations".

- and -

#26 "(a) The Ombudsman Act, 1975 be amended to as to specifically require the Ombudsman to give notice to all persons who may be adversely affected by any report and,

(b) in the interim the Ombudsman follow this practice of liberal or wide interpretation of the notice requirement of Section 19(3)".

the Committee perceived a greater awareness of the Ombudsman and his staff of their responsibilities to adhere scrupulously to the provisions of those two sections. The Committee will have further

comment respecting the substance of these two recommendations in the part of this Report concerning the operation of the Office of the Ombudsman.

(H) BLUEPRINT

In his First Report, the Ombudsman informed the Legislature that this document which he intends will form the basis of the operation and organization of his office during his tenure, would be tabled by the Spring of 1977. However, it has not to date been completed or tabled in the Legislature.

In his Second Report, the Ombudsman stated that finalization of this document is in his view dependent upon the completion of a management study and implementation of any recommendations etc., arising therefrom.

The Committee notes the opinions of the representatives of the Hickling-Johnston firm that the Blueprint in its draft form is crucial to provide the management consultant chosen by the Ombudsman with the necessary input and background information against which the present operation of the office can be viewed, and recommendations by the management consultant can be made to satisfy immediate and future needs of the office. The Committee agrees that this document is a necessary part of the general study of the present organization and operation of the office. Accordingly, the Committee recommends that this document, in whatever stage it presently exists, be produced to the management



consultant who may be chosen.<sup>(9)</sup> Further the Committee recommends that the Ombudsman in conjunction with the management consulting firm chosen integrate this Blueprint with the result of the management study and thereafter table it, together with the Blueprint provided to the management consultant in accordance with Recommendation #9, with this Committee for review as part of its continuing consideration of the organization and operation of the Office of the Ombudsman.<sup>(10)</sup>

(I) OPERATION OF THE OFFICE OF THE OMBUDSMAN

The Committee again reviewed the operation of the office of the Ombudsman internally and with respect to its working relationship with governmental organizations and with the Legislative Assembly. The purpose of this review was in part to determine whether the formulation by the Committee, of any general rules for the guidance of the Ombudsman in the exercise of his functions is now necessary and appropriate.

The Committee has already, earlier in this Report, expressed its concern respecting some aspects of the operation of the Ombudsman's office. The Ombudsman and his staff have also recognized certain problems and have generally taken steps to effect improvement directly or have recommended that steps be taken by those who, with the necessary expertise, can best assist with the necessary improvement. The Committee does not wish, at this time, to review these areas in any more detail. Such review and comment, in the absence of implementation by the Ombudsman of recommendations etc., pursuant to the intended management study

would be, in this Committee's view, a duplication of effort.

However, the Committee is concerned how certain functions required of the Ombudsman are being carried out by him and members of his staff. The Committee recognizes that the matters relating to the Ombudsman's office which will be addressed and hopefully improved by a management study, may in some part be contributing to the way in which the Ombudsman functions are being performed. That notwithstanding, the Committee is of the opinion that it is now necessary, for the guidance of the Ombudsman and his staff in the exercise of his functions, for it to begin the formulation of certain general rules.

The Committee will not, in this Report, be presenting to the Legislature general rules for formal implementation. Rather, it intends to review certain matters of particular concern wherein it perceives that the formulation of general rules is necessary. The purpose of this is two-fold. Firstly, to give the Ombudsman an opportunity to consider the Committee's comments and for him to provide whatever comments he thinks are appropriate to assist the Committee in its deliberations. Secondly, to inform each member of the Legislature of the areas wherein the Committee is considering general rules and to invite their comments.

The Ombudsman has suggested to the Committee that it prepare general rules in draft form. This suggestion is consistent with the Committee's own plan.

Areas Wherein The Committee Is Considering  
General Rules For The Guidance Of The  
Ombudsman In The Exercise Of His Functions

(i) Opinions and Recommendations of Ombudsman's Staff

In some circumstances Ombudsman's staff who investigate complaints have rendered opinions or made recommendations to representatives of the governmental organization being investigated, as to the abilities or suitabilities of certain servants, agents or employees. It is beyond the authority of these staff members while carrying out Ombudsman's functions to offer any opinions or recommendations. That is something reserved only to the Ombudsman and only after an investigation made pursuant to The Ombudsman Act has necessarily been completed and the procedure required by Section 19(3) has been implemented.

A person carrying out Ombudsman's functions shall not express to anyone, other than the Ombudsman or his authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization or respecting anything else arising out of the handling of the complaint by the Ombudsman and his office.

(ii) The Ombudsman's "Monitoring Procedure"

The Committee was informed by the Ombudsman's office

that this procedure is employed largely in the area of correctional services to give the Ombudsman's office the ability to "get a pulse on what is happening" within the particular institution. The Committee notes that this procedure is not contemplated by any of the provisions of The Ombudsman Act since it does not arise out of any decision, recommendation, act or omission or any decision by the Ombudsman so to investigate.

In the Committee's opinion, this procedure must be more formally outlined and controlled by the Ombudsman's office. It should be included in the Ombudsman's Office Procedural Manual and should have regard to the Ombudsman's statutory obligations in the performance of his various functions under The Ombudsman Act. A general rule limiting the scope and effect of this procedure is necessary.

(iii) Preliminary Investigations By The Ombudsman's Office

The Committee described this procedure and commented thereon in its Second Report (page 3). The Committee continues to be of the view that this procedure should be strictly limited to cases wherein further information is required by the Ombudsman either to confirm a complaint or wherein immediate assistance of a complainant is required and the circumstances of the complaint makes the procedural requirements of The Ombudsman Act impossible. However, once the substance of the complaint has been confirmed by the Ombudsman's office or where immediate disposition of the matter is neither possible nor advisable, the requirements of The Ombudsman Act must be followed.

(iv) Informal "Recommendations" Made By The  
Ombudsman To Governmental Organizations

A procedure has developed within the Ombudsman's office in situations where, in his opinion, he cannot formulate, pursuant to Sections 22(1) and 22(2) of The Ombudsman Act, an opinion respecting the decision, recommendation, act or omission which was the subject matter of the investigation and yet the consequences of which are perceived by him to have been onerous on the complainant. In those situations, an informal recommendation (also called a suggestion) is made to the governmental organization. The Committee considers this practice in itself commendable. It displays a caring attitude towards the complainant by taking steps above and beyond the strict provisions of the Act in an effort to resolve the particular problem.

However, if the particular governmental organization does not respond affirmatively to the Ombudsman's informal suggestion, the Ombudsman should not ask this Select Committee or the Legislature to support and implement his informal recommendation. Nor should the Ombudsman in any of his reports, comment on the fact of his informal recommendation or the governmental organization's response thereto. Such a report might be misinterpreted by the governmental organization and might strain the working relationship already existing between them. It also might cause the public to misunderstand the purpose and legal effect of such an exchange.



(v) Procedure Of The Ombudsman When A Recommendation  
Is Denied By A Governmental Organization

In his Second Report, the Ombudsman has referenced four recommendations made by him pursuant to Section 22(3) of The Ombudsman Act which have been, for various reasons, rejected by the governmental organization in question. However, in each case, the Ombudsman considered the governmental organization's response to his recommendations to be both adequate and appropriate and accordingly did not exercise his discretion to send a copy of his report and recommendations to the Premier and thereafter, if necessary, report to the Assembly.

Instead, the Ombudsman referred the matters to the Select Committee. In each case, the Ombudsman's office has confirmed that, notwithstanding the responses of each governmental organization, the Ombudsman continues to fully support his recommendations before the Committee. He has in effect requested that the Committee in each case support his recommendation and so report to the Legislature for implementation.

At page 33 of its Second Report, the Committee stated that:

"the functions of the Ombudsman must be carried out with scrupulous adherence to the provisions of the statute".

In the Committee's opinion, in these circumstances, the Ombudsman has not adhered to the provision of the statute. By referring the recommendations directly to the Legislature in his Second Report, while continuing to seek the relief in accordance with the

terms of his recommendations, he has eliminated the step to the Premier's office as required by Section 22(4) of The Ombudsman Act.

This Committee will, when the circumstances warrant, give full support to a recommendation made by the Ombudsman rejected by a governmental organization. However, the Committee in those situations will require that the Ombudsman has, in every respect, carried out the necessary provisions of the statute. To do less would be to expose the Ombudsman to criticism and might undermine the confidence which the public must have in his office.

(vi) Ombudsman's Report And Recommendations  
Pursuant To Section 22(3) Of The Ombudsman Act

The Committee continues to see reports and recommendations sent by the Ombudsman's office to governmental organizations with opinions and recommendations other than in the exact wording contained in Section 22(1) and 22(3) of The Ombudsman Act. The Ombudsman's office is still concerned as to the reaction some governmental organizations have to the actual wording of Section 22.

That notwithstanding the Committee is of the opinion that any deviation from the wording in Section 22 in a report of the Ombudsman of his opinions and recommendations leaves the matter of those opinions and recommendations open to interpretation by the governmental organization and therefore doubt and/or challenge. The Ombudsman should take every precaution that an opinion and recommendation made by him pursuant to this

Section is understood in every respect by the governmental organization so that it can adequately consider the report and prepare the response most appropriate in the circumstances.

- (vii) Consistency Between Summary Of Complaints In Letters Sent To Governmental Organizations Pursuant To Section 19(1) Of The Ombudsman Act and Reports On The Opinion And Recommendations Of The Ombudsman Pursuant To Section 22 Of The Ombudsman Act

There are occasions wherein the notice sent to the governmental organization pursuant to Section 19(1) by the Ombudsman informing it of the substance of the complaint and of his intention to investigate, contains particulars of the decision, recommendation, act and omission to be investigated. However, when the Ombudsman's investigation has been completed and a report with his opinion and recommendations is sent to the governmental organization pursuant to Section 22(3) or when he communicates his findings to the governmental organization in some other way, there are no specific opinions and/or recommendations or findings which relate to or refer back to the specific allegations of complaint as found in the original notice.

This in the Committee's opinion, only leads to uncertainty in the minds of the governmental organization and others having knowledge of the matter, as to whether the Ombudsman's investigation has been complete and whether the original complaints have been in fact substantiated. Accordingly, in the Committee's opinion a report pursuant to Section 22 of The Ombudsman Act must at the least, specifically reference the complaints which are identified by the Ombudsman and referenced in his Section 19(1) letter.



Where, as a result of the Ombudsman's investigation a finding respecting the original complaint is made in favour of the governmental organization, there should at least in his report be a clear reference that the original specific complaints cannot be substantiated.

(viii) Detailed Case Summaries In The Ombudsman's Report

In the Committee's opinion, the report of these particular summaries should parallel on a comprehensive factual basis the steps taken and required by the Ombudsman in exercising his function pursuant to The Ombudsman Act in respect of the particular complaint reported upon. This type of reporting will eliminate any uncertainties and inconsistencies between the case summary, the actual material contained in the Ombudman's file, and the information given to the Committee by the Ombudsman or his staff. The Committee recommends that the Ombudsman include in the case summaries hereafter the following:

- (a) an identification of the complaint received in writing indicating whether it is one or a combination of a decision, recommendation, act or omission of a governmental organization;
- (b) particulars of the Ombudsman's decision to investigate pursuant to Section 15(2) with reasons therefor, if any;
- (c) a summary of the investigation undertaken with special reference to the provisions of Sections 19 and 20 employed by the office in the circumstances;

- (d) if any notification has been sent to the governmental organization pursuant to Section 19(3) a description of the notice together with a description, if any, of what representations had been made to the Ombudsman by those affected;
- (e) the specific opinions reached by the Ombudsman after the investigation has been made pursuant to Sections 22(1) or 22(2) with concise reasons therefor;
- (f) the specific recommendations made to the governmental organization pursuant to Section 22(3) with concise reasons therefor;
- (g) the response, if any, received from the governmental organization in respect of his recommendations and a statement by the Ombudsman whether in his opinion the response is adequate or appropriate;
- (h) a report on any meetings held by the Ombudsman with the Premier in respect of any recommendations denied;
- (i) if a decision is made by the Ombudsman not to refer the matter to the Premier reasons therefor;
- (j) a statement by the Ombudsman of what he wishes the Committee to address itself to in considering a particular complaint and what recommendation, if any, he would like the Committee to make to the Legislature;
- (k) where a finding has been made in favour of the governmental organization, items (a) through (c)

inclusive and item (j) should be contained in the case summary.<sup>(11)</sup>

(ix) Line Summaries Of Complaints In Ombudsman's Report

In some circumstances the summary of the complaints in these line summaries (Chapter 4 Second Report) when compared to the recorded result tend to mislead the reader with respect to the results of the Ombudsman's investigation. For example, Complaint #2402 found at page 321 of the Ombudsman's Second Report concerning the Ministry of Natural Resources reports a complaint of undue harassment by conservation and wildlife officers. The result reported in this summary is that the Ombudsman's office "assisted resolution in favour of complainant". On the face of this summary it appears that the complaint of undue harassment was resolved in favour of the complainant. That is, that the Ombudsman's office did in fact confirm such activity and took such steps as to resolve same in favour of the person complaining. The Committee reviewed this particular complaint in detail and at no time was either a complaint of undue harassment made specifically to the Ombudsman's office nor was it in any way confirmed as a result of the Ombudsman's investigation.

Therefore, the Committee recommends that the Ombudsman's office should revise its terminology employed in reporting these summaries so that the risk of misinterpretation by the public as to the conduct of the governmental organization is eliminated.<sup>(12)</sup>

(x) Notice To Governmental Organization Or Person  
Pursuant To Section 19(3) Of The Ombudsman Act

The Ombudsman and his staff have had difficulty in the interpretation and application of the provisions of this section requiring the Ombudsman to give a governmental organization or person the opportunity to make representations where it appears at any time during the course of an investigation that there may be sufficient grounds for his making any report or recommendation that may adversely affect that governmental organization or person.

The Committee interprets the phrase "adversely affect" as applying to the decision, recommendation, act or omission which is being investigated, and the opinion and recommendation under Section 22 which the Ombudsman may have sufficient grounds to make. That is, whenever there may be sufficient grounds for a report or recommendation under Section 22(3) which has the effect of altering, opposing or causing the original decision, recommendation, act or omission to be changed in any way, the Ombudsman has an obligation to give the governmental organization and any person who is identified or is capable of being identified and who may have made or contributed to the decision, recommendation, act or omission, an opportunity to make representations. Wherever the Ombudsman is in doubt as to whether or what persons ought to be given such an opportunity, he should be overly broad rather than restrictive in his application of the provisions of this section.

(J) SPECIFIC CASE SUMMARIES WHEREIN ISSUES ARE RAISED  
REQUIRING A MORE DETAILED REVIEW BY THE COMMITTEE  
AND CASE SUMMARIES WHEREIN RECOMMENDATIONS MADE BY  
THE OMBUDSMAN TO THE GOVERNMENTAL ORGANIZATION  
HAVE BEEN DENIED

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(a) Specific Case Summaries Wherein Issues Are Raised  
Requiring A More Detailed Review By The Committee

1. Ministry of The Attorney General

(1) Complaint #5 at page 500 of the Ombudsman's Report, describes the complaint of a person respecting the amount of compensation awarded to him by the Ontario Municipal Board in 1969 for lands expropriated in 1965 by the then Department of Public Works. Because of the unavailability of the transcript of the Ontario Municipal Board proceedings, the Ombudsman concluded that his investigation was incomplete and accordingly, no recommendation was made pursuant to Section 22(1) of The Ombudsman Act respecting the decision of the Ontario Municipal Board awarding compensation to the complainant.

That notwithstanding, the Ombudsman decided that the complainant should have the opportunity to apply to the Ontario Municipal Board to have his case reconsidered although the prevailing sections of The Ontario Municipal Board Act and The Expropriation Procedures Act prevented same and, the complainant had already abandoned an appeal to the Court of Appeal from the original decision of the Ontario Municipal Board. Accordingly, he recommended to the Chairman of the Ontario Municipal Board and ultimately to the Attorney General that Section 42 of The Ontario Municipal Board Act be amended permitting the complainant to apply to the Ontario Municipal Board for a re-hearing.



Notwithstanding the Ombudsman's decision that the could not make a recommendation under Section 22 of The Ombudsman Act, he did in fact in his communications with both the Chairman of the Ontario Municipal Board and the Attorney General describe his proposed amendment as a "recommendation". The Attorney General responded to the Ombudsman noting that the complainant at all times was represented by experienced counsel, that he chose not to pursue the appeal of the decision of the Ontario Municipal Board to the Court and that he did not appeal to the Cabinet within the required time limited and concluded he was not convinced that the suggested amendment to Section 42 of The Ontario Municipal Board Act would resolve the person's complaint. The Attorney General also noted that the amendment could open the door to other applications for re-hearing and would in effect set an "undesirable precedent" as to the time which may elapse between an original hearing and an application for re-hearing.

Because the Ombudsman, in his opinion, could not formulate an opinion pursuant to Section 22(1) of his Act and accordingly make a recommendation in accordance with sub-section 3 thereof, there is no obligation on the Ontario Municipal Board and/or the Attorney General to respond to the Ombudsman's "recommendation" in accordance with the provisions of Section 22(4) of The Ombudsman Act. That is, the Attorney General's response to the suggested amendment to The Ontario Municipal Board Act cannot be considered by the Ombudsman or anyone else to be inadequate or inappropriate and therefore the Ombudsman cannot seek the desired result of his "recommendation" from the Premier and/or the Legislature and this Select Committee. The Committee's comments referable to the

procedure of "informal recommendations" is referenced above (page 34). The Committee, therefore, makes no recommendation in respect of this matter.

In the Committee's opinion, the Ombudsman made his informal "recommendation" to the Attorney General not so much because the decision of the Ontario Municipal Board warranted some steps or action, but because the complainant is perceived, by the Ombudsman's office, to have a need to feel fairly treated by being granted an opportunity for a re-hearing. Whether or not the Ombudsman had enough information to come to an opinion pursuant to Section 22 of The Ombudsman Act or whether other avenues of investigation could have or should have been pursued, is a matter solely for the discretion of the Ombudsman. The Committee, however, will not in these circumstances, complete an investigation so that an opinion and recommendation can be made or confirmed pursuant to Section 22, nor in these circumstances, will it make any recommendations to the Legislature in the terms and substance of the Ombudsman's informal recommendation.

The Committee views the Ombudsman's procedure of "informal recommendations" as a useful tool consistent with his policy of doing everything possible for a complainant. However, a governmental organization to which such an informal recommendation is made ought not to be placed in a position of having to defend its response to the Ombudsman, this Committee or the Legislature.

The Committee does not intend these remarks to be a comment on the merits of the complaint within the context of The

Ombudsman Act. It does, however, recommend to the Ombudsman that he re-open this matter to consider whether all complaints arising out of this case have been fully investigated and to consider whether any re-emphasis of investigation might permit him to formulate opinions and make recommendations pursuant to Section 22 of The Ombudsman Act. (13)

The Committee has received a copy of a letter from the M.P.P. representing this complainant sent to the Premier on August 25, 1977 summarizing the member's perception of this person's complaint and requesting that the Premier give favourable consideration to the "recommendation" made by the Ombudsman in this case. The member may have communicated with the Premier in this way in the mistaken belief that this complaint was being processed in accordance with The Ombudsman Act and Section 22(4) in particular.

Responses To Recommendations Made By  
Select Committee In Its Second Report

In its Second Report, the Committee made two recommendations to the Ministry of the Attorney General being Recommendation #11:

"That the Legislative Assembly require the Ministry of the Attorney General in concert with the Ministry of Transportation and Communications, to effect a centralized scheme, using the computer resources of the Ministry of Transportation and Communications, whereby licenses that have



been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines". (page 20)

and Recommendation #12 being that:

"The Ministry of the Attorney General develop a centralized scheme for the payment of fines throughout Ontario with the aid and assistance of whatever computer resources are considered appropriate and necessary in the circumstances". (page 21)

In response to Recommendation #11, a representative of the Attorney General's office advised the Committee that a proposal has been drafted to centralize the payment of fines and also to centralize all appropriate records. However, a proposal has not yet been drafted which would effect an immediate reinstatement of a person's licence upon the payment of the outstanding fine.

The Committee commends the Ministry of the Attorney General for its continued concern and action in this area. The Committee notes, however, the comments of the Ministry that the implementation of a process to immediately reinstate a licence upon the payment of fine would involve an expenditure of approximately \$1,000,000.00.

However, the underlying philosophy of the Attorney General's efforts is to collect the millions of dollars of outstanding fines in this province. In the Committee's opinion, a system which contains the elements of an immediate suspension

for the non-payment of fines and the immediate reinstatement for the payment of that fine will be most effective in serving to reduce the amounts presently outstanding. Accordingly, it recommends that the Ministry of the Attorney General effect a centralized scheme whereby licences that have been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines. (14)

In response to the Committee's Recommendation #12, the Committee was informed that a proposal has been drafted to centralize the payment of fines in Provincial Court offices. The Committee commends the Attorney General and his office for its actions in this regard and looks forward to notification when the system has been implemented.

## 2. Ministry of Colleges and Universities

Complaint #13 at page 517 of the Ombudsman's Second Report concerns the issue of the Ombudsman's jurisdiction to investigate complaints against community colleges. The Committee was informed by the Deputy Minister of Colleges and Universities that the question of jurisdiction has not been seriously considered by the Ministry. Rather it is left to the individual community colleges to deal, on an individual basis, with the Ombudsman in any given circumstance of complaint.

The Committee generally does not take issue with the fact of the Ombudsman's jurisdiction in this area. However there is a relatively new procedure available to administrative staff of community colleges, being an appeal to an arbitrator or an

arbitration board from a decision of the Board of Governors of a community college. It is a provision of this appeal procedure that a single arbitrator or a three person arbitration board will be chosen of individuals entirely independent from the community colleges, the Ministry of Colleges and Universities and the party launching the appeal.

The Committee is of the opinion that the Ombudsman is without jurisdiction to investigate any decision, recommendation, act or omission of an arbitrator or board of arbitration in this appeal process. The Committee views this appeal procedure as one in the nature of a private arbitration wherein the parties thereto have accepted the decision of the arbitrator or board as final and binding.

### 3. Ministry of Consumer and Commercial Relations

Complaint #25 at page 532 of the Ombudsman's Second Report deals with the length of time provided under The Consumer Reporting Act that credit information remains in the possession of and is reported by Consumer Reporting Agencies. The Ombudsman, in his recommendation to The Ministry, asked that consideration be given to reducing the present seven year period. The Deputy Minister responded to the Ombudsman's recommendation saying that the Ombudsman's comment on the limitation period would be given serious consideration.

After hearing from representatives of the Ombudsman's office and the Executive Director of the Business Practices Division of the Ministry of Consumer and Commercial Relations,

the Committee is unable to conclude that any prejudice presently exists as a result of the present seven year period, provided the information contained in the files of Consumer Reporting Agencies is accurate. However, the Committee recommends to the Ombudsman that his office keep the Ministry informed of any further examples of perceived hardship to individuals as a result of the seven year period <sup>(15)</sup> and that in the event the numbers of complaints does increase, the Committee recommends that the Ministry forthwith thereafter effect a study on the merits of reducing the period to one which will reduce the degree of hardship while preserving the purpose and substance of the legislation.<sup>(16)</sup>

(ii) Complaint #26 deals with the ability of parents to register as the surname of their newborn or adopted children the husband's and the wife's surname hyphenated in either order.

The Deputy Registrar General informed the Committee that a package of legislation amending the Vital Statistics Act was expected to be tabled in the Legislature by the Minister in the current session. He advised that this package would include an amendment deleting the present requirement of registration that the father's name precede that of the mother's which amendment would afford the parents the option of choosing the order of the surnames and thus satisfy the Ombudsman's recommendation.

The Committee perceives some urgency to amend the Vital Statistics Act in this way. Accordingly, it recommends

that the Minister table during this current session the amendment as described by the Deputy Registrar General to the Committee. (17)

Recommendation #20 Of The Select  
Committee In Its Second Report

At page 32 of its Second Report, the Select Committee recommended that:

"The Ministry of Consumer and Commercial Relations table legislation, as soon as possible, to amend the Vital Statistics Act to provide authority in the Registrar General to make a sex designation change on the birth certificate of a person who has successfully undergone the necessary operative procedures, containing the appropriate safeguards to ensure that the effect of the sex designation change not be retrospective."

The Ombudsman referenced this particular complaint and the recommendation of the Select Committee in his Second Report indicating that because the Vital Statistics Act had not yet been amended, the complainant was experiencing hardship, being unable to enter into an intended marriage.

The Deputy Registrar General informed the Committee that legislation satisfying the Committee's recommendation and the concerns of the Ombudsman would be tabled in the current session of the Legislature. However, the Ministry does not intend the Legislation to grant a person the status to marry in any circumstances. In the Committee's opinion this legislation



will create an undesirable result by establishing a third category of individuals who, at least in the area of marriage, will have no status in law. The Committee has not considered any further ramifications of this legislative change. However, it is certain that the legislation will place the legal status of such persons in doubt in other areas. Accordingly, this Committee recommends that the Minister introduce legislation clarifying and defining the status of persons affected by the sex designation change so as to avoid the creation of a third category of persons in the Province of Ontario.<sup>(18)</sup>

#### 4. Ministry of Correctional Services

Since March 1977 a new directorate has been created within the Ombudsman's office dealing exclusively with correctional and psychiatric services. All cases which were referenced by the Ombudsman in his Second Report concern the complaints processed by his office before this new directorate was created.

In his Second Report, the Ombudsman chose to disclose the identity of the penal institutions from which complaints emanated and to which various recommendations of the Ombudsman were made. This disclosure in many cases of necessity identified, to their embarrassment, present and former staff of the Ministry of Correctional Services. The Committee regrets these disclosures and recommends to the Ombudsman that hereafter in any reports, except to the extent he considers it necessary pursuant to Section 13(2) of The Ombudsman Act, the identity of

the penal institutions from which complaints originated should not be disclosed. (19)

(a) Complaint #27 at page 536 was reviewed by the Committee for the purpose of reviewing certain informal procedures employed by the Ombudsman's office in investigating certain complaints relating to penal institutions, and for the purpose of determining the possible prejudice befalling persons as a result of those procedures.

At some time subsequent to the initial receipt of this complaint by the Ombudsman's office, a representative of his staff held meetings with certain senior officials of this Ministry wherein comments were made by the Ombudsman's representative as to the suitability and competence of the superintendent of the particular institution. This was done, notwithstanding the fact that the person about whom the comments were made, had no opportunity of knowing what the comments were, or of making any response in respect thereto.

The Committee has already commented on this activity in its part of this Report entitled Operation of the Office of the Ombudsman, (page 30). Accordingly, the Committee recommends that the Ombudsman forthwith take such steps as are necessary within his office to instruct his staff to hereafter refrain from the type of comments as are described herein. (20)

The Committee is concerned lest certain individuals employed at the time by the Ministry of Correctional Services might have been prejudiced as a result of the manner of the

investigation by the Ombudsman's office. Accordingly, it has instructed its counsel to interview the persons affected for the purpose of determining whether in fact any prejudice had been suffered. The Committee intends to report to the Legislature and the Ombudsman on those interviews and the conclusions reached by its counsel.

(b) Complaint #35 at page 545 of the Ombudsman's Report raises the issue of the limitations imposed on the representatives of the Ministry in their ability to grant temporary absence passes to inmates. The Deputy Minister of Correctional Services informed the Committee that the regulations governing the granting of temporary absence passes are worded in such a way that individual interpretation and application by Ministry representatives is possible with resultant inconsistency of treatment. The Deputy Minister has taken steps to rectify this, recognizing that a great deal of inconsistency can be alleviated by educating all appropriate members of his administrative staff in the breadth and scope of the regulations in question.

The Committee commends the Deputy Minister for recognizing this problem and for taking very positive steps to keep any inconsistency of treatment in this area to a minimum. To assist the Deputy Minister the Committee recommends that he and his Ministry undertake a continuing educative program for the administrative staff who issue temporary absence passes so that the regulations can be interpreted as consistently and as equitably as possible over the entire province. (21)



Response To Recommendations Of The  
Committee In Its Second Report

The Select Committee in its Second Report addressed two recommendations to the Ministry of Correctional Services to which responses have been received from the Deputy Minister.

These recommendations are:

- #13            "A clear policy of the Ministry of Correctional Services is required to provide for the superintendent or his appropriate designate to conduct a hearing in respect of disruptive behaviour, as soon as possible subsequent to the actual behaviour, so that the time spent by an inmate in segregation before a hearing is minimum in the circumstances. Such a hearing should be conducted within twenty-four hours of the event. Appropriate amendments should be made to the regulations under the Ministry of Correctional Services Act to provide that, at all times, someone is present at the institution with the authority to conduct such a hearing". (page 24)
- #14            "The Ministry of Correctional Services be required to inform all inmates in provincial Correctional Institutions of the expansion of OHIP coverage available to inmates, by means additional to its information booklet". (page 25)

In response to Recommendation #13, the Deputy Minister informed the Committee that a review of this process is continuing. However, the Deputy Minister expected a final decision imminently that would include in all cases a senior staff member of the particular institution conducting, within twenty-four hours of the event, a form of "preliminary" hearing. The Committee commends the Ministry for its action in this regard and recommends that this policy review be completed and that a new policy satisfying the terms of Recommendation #13 be effected as soon as possible. (22)

In response to Recommendation #14, the Deputy Minister informed the Committee that all appropriate steps have been taken to provide inmates in provincial Correctional Institutions with information concerning the expansion of OHIP coverage. The Committee commends the Ministry for its quick and positive response to this recommendation.

##### 5. Ministry of Education

Complaint #47 at page 562 of the Second Report deals with the perceived need by the Ombudsman for a more comprehensive insurance policy available to students in Ontario which would provide benefits to injured students, compensating, where appropriate, for a loss of future earning power.

In response to the Ombudsman's recommendation, the representatives of the Ministry of Education held meetings with representatives of the Canadian Association of Accident and Sickness Insurers regarding the possibility of the creation of a policy to provide benefits as described to students who sustained

injuries in the case of pure accident as a result of participation in shop classes and in organized athletic activities. The representatives of the insurance industry informed the Ministry that it was impossible to write a policy in the form recommended by the Ombudsman. However, they suggested as an alternative, that a policy be considered that would provide very substantial accident benefits, on a lump sum basis, reasonably consistent with the kind of award that might be given by a court. The representatives of the insurance industry informed the Ministry that further discussion and information is required respecting the nature and substance of this coverage before it could prepare and submit a meaningful proposal.

The Committee is of the opinion that coverage of this type offered to all students in any educational institution in Ontario is desirable. The Committee notes that certain representatives of the Ministry of Education share the Committee's views and have recommended that the matter be pursued with the insurance industry. Accordingly, the Committee recommends that the Ministry of Education forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of pure accident as a result of participation in shop classes and in organized athletic activities.<sup>(23)</sup>

## 6. Ministry of Government Services

Complaint #57 at page 578 of the Second Report raises

the issue of the limitation presently placed upon the current earnings of a former provincial civil servant without that person suffering a reduction in superannuation benefits. The present provisions of the Public Service Superannuation Act provide that a superannuate's total earnings (pension and salary combined) may not surpass the average of his or her last three months' earnings before retirement from the civil service. The Chairman of the Civil Service Commission informed the Committee that the Ministry has approved an amendment to the Public Service Superannuation Act which would remove this restriction on total earnings. The amendments provide that a pension would only be suspended if that person again became a contributor to the pension plan.

The Committee is of the opinion that this limitation on current earnings ought to be removed as soon as possible. Accordingly, it recommends that the Minister of Government Services table the appropriate legislation in the Legislature during this current session.<sup>(24)</sup>

## 7. Ministry of Housing

Complaint #84 at page 625 of the Second Report raises the issue of whether the Office of the Ombudsman is being used unnecessarily for any reason by members of the legal profession. The Committee noted at least three other complaints in the Ombudsman's Report wherein a lawyer was, in some degree, involved in the Ombudsman's process on behalf of his client in respect of the particular complaint. The Committee also noted comments by some members of the Ombudsman's staff that there have been

occasions, not necessarily referenced in the Second Report, wherein they have suspected lawyers have used the facilities of the Ombudsman's office seeking certain results which should have and could have been obtained by the lawyer directly on behalf of his or her client.

With respect to the four cases noted by the Committee in the Ombudsman's Second Report, it found no evidence that the lawyer in each case used the office and facility of the Ombudsman in any improper way.

The Committee hopes that no member of the legal profession would unnecessarily or improperly employ the services of the office of the Ombudsman for matters properly within the category of legal services whether or not a fee is ultimately charged to the client and whether or not the Ombudsman's office is given credit for the result obtained. The facilities of the Ombudsman's office are already taxed to an extreme without members of the legal profession delegating, to the Office of the Ombudsman, matters which are within their responsibility and competence.

#### 8. Ministry of Labour

Complaint #91 at page 635 of the Ombudsman's Second Report raises the issue of the Ombudsman's jurisdiction over the Human Rights Commission.

In March of 1976 the Commission received an independent legal opinion that the Ombudsman has jurisdiction to review decisions, recommendations, acts or omissions of the Ontario



Human Rights Commission. However, that opinion was only directed to the general question of jurisdiction. In fact the Executive Director of the Commission informed the Committee that the Human Rights Commission is still not certain of the extent of the Ombudsman's jurisdiction in a specific sense having regard to the public nature of the people who comprise the Commission.

The Committee does not wish to make any recommendation respecting the present status of the Ombudsman's jurisdiction over this Commission. It does, however, wish to inform the Legislature and the Ombudsman that the question of jurisdiction in all areas relating to the Human Rights Commission is by no means settled and will be a matter of future review by the Committee particularly if as and when all or some of the recommendations of the Ontario Human Rights Commission contained in its recent report dated July, 1977 are implemented.

#### 9. Ministry of Health

Complaint #69 at page 598 of the Ombudsman's Second Report concerns the issue of the adequacy of the Ministry's policy of "escorted privileges" afforded to patients at a particular psychiatric facility in the province. The Ombudsman concluded, after his investigation of this matter, that the actions of the Ministry were appropriate in the circumstances. That notwithstanding, the Ombudsman made a recommendation, which the Committee views to be on the level of an "informal recommendation", that the policy of escorted privileges be reviewed to determine what measures could be taken to ensure that a patient on those privileges does

not leave the hospital unattended, and to ensure that the patient's whereabouts are known to the staff at all times. The Deputy Minister of Health responded to the Ombudsman's recommendation positively by asking officials of the Ministry to address themselves to the recommendation and report to him thereafter. Shortly after this initial response from the Deputy Minister, he informed the Ombudsman that during the course of the Ministry's continuing review of its policy related to escorted privileges a number of "mechanical difficulties" had been perceived. At that time the Deputy Minister advised the Ombudsman he would be responding to him again outlining the specifics of the new program when finalized and implemented.

The Ombudsman immediately after receiving that communication and before the Deputy Minister had again responded to him, dispatched one of his investigators to the psychiatric facility to "investigate" the matter of the "mechanical difficulties" described by the Deputy Minister. As a result of that investigator's attendance at the facility, a letter was addressed directly to the Administrator by the Ombudsman's office suggesting revision of certain specific matters. As of the date the Ombudsman tabled his report with the Speaker, the Deputy Minister of Health had not made any further response to the Ombudsman respecting the Ministry's study and implementation of any new procedure.

Representatives of the Ministry of Health advised the Committee that a new and more detailed policy is now in force which is designed to keep the risks of incidents to patients afforded such privileges to a minimum. The Ministry represen-

tatives also advised the Committee that this procedure is capable of application to all psychiatric facilities in the province and not just the particular one to which the Ombudsman's recommendation was addressed.

The Committee commends the Ministry of Health for its quick and positive response to the Ombudsman's recommendation in this area. The Committee is also impressed with the Ministry's observations that the new procedure is capable of general application. Accordingly, the Committee recommends that the Ministry of Health forthwith formulate procedures in this area of the type and nature of the procedure presently in force at the particular psychiatric hospital, for general application in psychiatric hospitals throughout Ontario. (25)

The Committee is concerned with the apparent re-investigation of the very subject matter of the Ombudsman's recommendation to which the Deputy Minister and his staff were, at the same time, preparing a full and appropriate response. In the Committee's opinion, actions by the Ombudsman's office of this nature might be interpreted by the governmental organization as an expression of distrust or lack of confidence in its ability to adequately or appropriately take action in response to the Ombudsman's recommendation. Accordingly, the Committee recommends that in the future, during the period of time, provided that it is reasonable, that the Ombudsman is waiting upon action, steps or response from a governmental organization to a recommendation made by him, no further acts in the nature of investigations of the particular complaint be undertaken by his office without the express knowledge of the



head of the governmental organization in question.<sup>(26)</sup>

#### 10. Ministry of Natural Resources

Complaint #100 at page 652 of the Ombudsman's Second Report deals with issues arising out of the imposition by the Ministry of Natural Resources of length restrictions and number restrictions of certain fish which can be caught by commercial fishermen in Lake Erie. The Ombudsman's office undertook and extensive investigation involving at least nine members of his staff and in excess of 400 hours. As a result of this investigation, the Ombudsman, after discussions with Ministry officials, made eleven recommendations to the Minister of Natural Resources, which the Minister accepted as supportive of the Ministry's activities or planned activities in the area. The Committee noted that the majority of these recommendations addressed themselves to matters to which the Ministry had already considered and had formulated to some degree, its own policies.

The Committee is uncertain as to the affect, if any, that the Ombudsman's investigation and recommendations has had and will continue to have on the ultimate resolution of the difficulties experienced by the commercial fishermen in Lake Erie. However, what may be more important is that the commercial fishermen who sought the assistance of the Ombudsman, have the sense that the Ombudsman performed and will continue to perform a very valuable function for them. In the Committee's opinion, it is extremely important that when a member or members of a group perceive themselves wronged by a governmental organization that they have

the confidence that the Ombudsman's office will, in some way, assist it and contribute to the resolution of their plight. In this respect the Committee commends the Ombudsman for the fact of his involvement on behalf of these individuals.

11. Workmen's Compensation Board

In its Second Report to the Legislature, this Committee addressed six (6) recommendations to the Workmen's Compensation Board to which the Board has responded. These recommendations are as follows:

#2            "The Legislature require the Workmen's Compensation Board to print the Board's pamphlet entitled "Information About The Appeal Procedure" in the same five languages as its "Claim Information" booklet". (page 9)

#3            "The Legislature require the Workmen's Compensation Board to prepare a separate booklet or information circular in the same five languages to be forwarded to all claimants along with the form H1 letter and containing a description of the Board's appeal process and the procedures required thereby, based on the document tabled with the Committee by the Vice-Chairman of Appeals and attached as Schedule "C" to this Report". (page 10)

#4 "The booklet or information circular should also contain a very clear and obvious statement that if the claimant does not understand any matter of the process or the procedures described, he or she should communicate with identified individuals within the Workmen's Compensation Board". (page 10)

#5 "The Workmen's Compensation Board review its policy regarding disclosure of its file to a claimant personally, with a view to its amendment to a policy of complete and full disclosure to the claimant". (page 11)

#7 "The Ombudsman and the appropriate Workmen's Compensation Board Commissioners immediately commence discussions for the purpose of arriving at a mutually satisfactory working relationship". (page 12)

#9 "The Workmen's Compensation Board make available to the Ombudsman's office all appropriate Commissioners, Appeals Administrators and operating staff for the purpose of providing information relating to any matter that is being investigated by the Ombudsman". (page 14)

The Committee wishes at this time to commend the Workmen's Compensation Board for the manner in which it has responded to the Committee's recommendations. In every case, the

Board Commissioners have given serious consideration to the Committee's recommendations and where it was considered appropriate or practical, steps have been taken to satisfy the substance of those recommendations.

In response to the Committee's Recommendation #2, the Board as early as June 1977 informed the Committee that the pamphlet referred to therein has been translated into the five languages as recommended.

In response to the Committee's Recommendations #3 and #4, the Board as early as June 1977 accepted in principle the Committee's recommendation that a pamphlet dealing with claims and appeal processes should be prepared and sent out with the H1 letter or at the same time as the H1 letter is mailed. However, the Board has not as yet prepared such a pamphlet. This is primarily due to the fact that the Workmen's Compensation Board has, since the Committee's Second Report, been studying and considering changes to its appeal process. Changes have finally been approved by the Board Commissioners as at September 13, 1977 for implementation hopefully by November 1977.

The Committee notes, however, that whereas in June 1977 the Vice-Chairman of Appeals anticipated that the changes to the appeals process would be substantial, the changes have only been minor in nature. The amendments establish a first level of appeal consisting of appeals adjudicators appointed by the Board given the right to make decisions from the Board file, the right to conduct such investigations and hearings as may be required and render decisions, or refer the matter to an appeal board for hearing and

decision. It is further provided in the appeal amendments that in any case where the appeals adjudicator concludes from the review of the file that the appeal should be referred directly for an appeal board hearing he will advise the parties concerned in writing giving the reasons. If the appellant or his representative requests that an appeals adjudicature hearing be held in any event, this will be done.

Representatives of the Workmen's Compensation Board have expressed concern that strict implementation of Recommendations #3 and #4 in its Second Report distributed at the beginning of the process of a compensation claim might invoke a negative atmosphere in the mind of the claimant as to the whole process of compensation before any decision has in fact been made respecting the person's claim. Representatives of the Board suggested to the Committee that a booklet be distributed only to those persons who have received a decision of the Board which may be subject to appeal thus reducing the number of booklets to be distributed by approximately 85%.

However, the Committee remains of the opinion that a booklet of the type as contemplated by Recommendation #3 and Recommendation #4 in its Second Report should still be distributed to as many persons affected by the Board's process as possible and as early in the process of compensation, as possible. However, the Committee sees merit in the Board's concern that a booklet totally about appeals, distributed at the beginning of a claim, might in the minds of some persons, create a negative atmosphere which would affect the person's perception of the whole process.



Accordingly, the Committee recommends that the booklet or information circular referred to in Recommendations #3 and #4 of its Second Report be expanded to include a description and explanation of the entire process of Workmen's Compensation in Ontario and that such booklet be distributed to all persons receiving the Board's form H1 letter.<sup>(27)</sup> In making this recommendation, the Committee also recommends that the Workmen's Compensation Board consider whether its booklet entitled "Claims Information For Employees + Employers" is no longer necessary.<sup>(28)</sup>

In response to Recommendation #5 of the Committee's Second Report, the Vice-Chairman of Appeals informed the Committee that a independent legal opinion has been obtained which has yet to be fully considered and/or implemented by the Board Commissioners. The Committee recommends that the Workmen's Compensation Board complete its review of its policy regarding disclosure of its file to a claimant personally, as quickly as possible.<sup>(29)</sup> In reviewing this policy the Committee wishes to advise the Board that in its opinion, a policy of disclosing a file to some individuals and not to others cannot be reconciled with any reasons the Board has given to date. For example, if an employer's lawyer is able to review the Board file personally then, at the very least, the employee whose injury is the subject of appeal should, if he is not represented, have an opportunity of reviewing the Board's file on his own. In fact, to disclose a file to counsel for an employer and not to an employee puts the employer at a distinct advantage in the appeal process and is, in this Committee's opinion, a denial of natural justice to the employee.

In response to Recommendations #7 and #9 of the Committee's

Second Report, the representatives of the Board confirmed that meetings have in fact taken place between the Board and the Ombudsman's office which has resulted in an improvement in the working relationship and which has satisfied the need perceived by the Ombudsman to obtain information emanating from Appeals Commissioners, Appeals Administrators and operating staff.

At page 11 of the Committee's Second Report, it referenced a study group within the Workmen's Compensation Board which was at the time studying the entire appeal process. As a result, the Committee agreed that:

"it would serve no useful purpose for the Committee to make, at this time, any detailed findings and recommendations concerning those appeal procedures before the Board has completed its internal study and had an opportunity to implement all appropriate recommendations in connection therewith".

Since that time the group has completed its study and made certain recommendations for change to the Board Commissioners. Annexed hereto as Schedule "E" is the totality of the report and recommendations made by the study group to the Commissioners.

In addition, the Board's representatives have held discussions with various private interest groups on the substance of the group's recommendations before the final decision was taken by the Board's Commissioners. The Commissioners ultimately rejected the recommendations made by the group and referred the matter to

the Commissioners of Appeal to work as a committee to develop proposals for a revised two level system of appeals. This was done and it is in the substance as set out above (page 66) to become effective sometime in November, 1977.

Now that the Board's internal study referable to its appeal procedure has been completed the Committee now intends to commence its consideration and review of the Ombudsman's comments in his First Annual Report as to the complexity of the Board's appeal procedure. As a first step it wishes to draw all members' attention to Schedule "E" of this Report being the recommendations made by the Appeal's Commissioners to the Board which formed the basis of discussion with interest groups as referenced above. All members of the House are invited to review this material and to provide the Committee with their comments on what merits, if any, are perceived by these recommendations. The Committee further intends to review these recommendations with members of the Board at the earliest appropriate date. It is noted that the amendments recommended by the study groups would in its opinion meet certain objectives as set out at pages 5 and 6 of that part of Schedule "E" identified as Appendix 1 of the report and recommendations to the Commissioners to the corporate board with respect to the appeal's system. The Committee recommends that the Workmen's Compensation Board consider and report to this Committee whether the appeal system as amended will serve to satisfy the substance of the objectives intended by the Board's study group of the one level system as recommended. (30)

Complaint #132 at page 697 of the Ombudsman's Second



Report deals with three issues as perceived by the Ombudsman's office. Firstly, whether or not the particular complainant was required to repay monies to the Workmen's Compensation Board overpaid by it and secondly, whether the Workmen's Compensation Act provides the authority for the recovery of overpayments by the Workmen's Compensation Board. During the course of the Ombudsman's investigation a third issue presented itself concerning certain miscalculations made by the Workmen's Compensation Board of the amount of benefits payable to a great number of persons, all of which has resulted in overpayments being made.

The Ombudsman, after completing his investigation, concluded that sufficient doubt existed respecting the Board's authority to recover an overpayment to warrant either an application to the Supreme Court of Ontario for clarification or amending legislation by the Legislature. The Board, on the other hand, remains of the view that Part 1 of the Workmen's Compensation Act not only gives the Board authority to collect overpayments but imposes a duty to do so. The Board is not certain that it possesses statutory authority to write off any overpayments because of the obligation incumbent upon it under Part 1 of that Act to maintain the accident fund.

The Committee is of the opinion that there does presently exist authority under The Workmen's Compensation Act for the Board to recover any overpayments made to a workman. Having regard to the Board's obligation to maintain the accident fund it probably does not have authority under the Act to write off any overpayment. The question of whether the Workmen's Compensation Board ought

to have the authority to write off overpayments is a matter which ought to be considered in light of its obligation to maintain the accident fund in accordance with the provisions of Section 84 of The Workmen's Compensation Act.

The Committee concurs with the view that the statute ought to be amended in such a way as to clearly set out the Board's authority in respect to the recovery of and the writing off of the overpayments made to workmen. Accordingly, the Committee recommends that the Workmen's Compensation Board in conjunction with the Ministry of Labour forthwith cause an appropriate amendment to be tabled in the Legislature to The Workmen's Compensation Act.<sup>(31)</sup>

The Committee is also concerned with respect to the Board's present practice of collecting overpayments from claimants. The practice of forwarding a "form of letter" letter to the claimant advising of the amount of overpayment and demanding the repayment forthwith is in this Committee's opinion insensitive to the situation of that particular claimant and in the circumstances where the overpayment is entirely the fault of the Board, without justification.

The Committee was assured by representatives of the Workmen's Compensation Board that they would review their policy immediately with a view to implementing administrative procedures more sensitive to the individual concerned. Accordingly, the Committee recommends that the Workmen's Compensation Board effect changes in its procedures for the recovery of overpayment and that those procedures contain provisions wherein the particular circumstances of the workman is considered and that the

arrangements, if any, for repayment of monies be tailored to the workman's particular ability to repay. (32)

The method of recovery should not be standardized and should not necessarily come from future benefits paid to the worker by the Board. The manner, if any, of repayment should depend on a number of circumstances including the reasons for the overpayment, the amount thereof and the person's present ability to repay. In situations where the overpayment is as a result of a Workmen's Compensation Board error, the person affected should not be placed in a punitive position respecting any repayment arrangements.

Notwithstanding that the Ombudsman's office investigated three separate issues arising out of the complaint, in fact only two issues were the subject matter of recommendations and only two issues were reported in the Ombudsman's summary in his Second Report. It appears that during the course of the investigation the Ombudsman's office confirmed with representatives of the Workmen's Compensation Board that as a result of the Board's calculation of benefits payable to workmen under the provision of Sections 39, 41(a) and 43(a) of The Workmen's Compensation Act, overpayment of benefits have been paid to a large number of persons in Ontario. It appears to the Committee that the Ombudsman decided not to investigate this third issue any further or make any formal recommendation to the Workmen's Compensation Board in respect thereto.

It is not clear to the Committee when this decision was taken or whether it was pursuant to any of the provisions of

Section 18 of The Ombudsman Act. It is also not clear to the Committee when or whether the Ombudsman decided this issue was not sufficient to warrant an investigation pursuant to Section 15(2) "of his own motion". The Committee is concerned that the Ombudsman may not have completed his functions under the Act with respect to this third issue notwithstanding that it may very well be capable of "affecting any person or a body of persons in his or its personal capacity". The Committee is also concerned that the reasons why the investigation was not completed are not described in the Ombudsman's Second Report. Accordingly, the Committee recommends that the Ombudsman, in his next report, state the reasons why he decided not to investigate this matter further. (33)

(b) Recommendations Made By The Ombudsman To  
Governmental Organizations Which Were Denied

The Committee earlier commented (page 36) on the Ombudsman's practice with respect to these four recommendations wherein they were referred directly to the Legislature. The Committee will not be making any recommendations to the Legislature that the recommendations made by the Ombudsman in each of these cases be in some way implemented by the governmental organization in question.

However, in the Committee's opinion, it would not be fulfilling its obligation to the Legislature and to the people of the Province of Ontario if it did not comment further on these cases individually making such recommendations as it deemed appropriate.



12. Ministry of Government Services

In Complaint #60 at page 581 of the Ombudsman's Second Report the Ombudsman made a recommendation to the Ministry of Government Services that it pay a particular complainant a fixed sum of money for losses and legal expenses incurred as a result of certain actions of the Ministry which in the Ombudsman's opinion, directly attributed to those losses and legal expenses. The Ministry of Government Services purchased from a third party a piece of land which this particular complainant had previously orally agreed to purchase from the third party. The Ministry representative negotiated the purchase of the land with full knowledge of the previous oral agreement.

After receiving the Ombudsman's recommendation the Deputy Minister of Government Services obtained an opinion from the Deputy Attorney General that on his interpretation of Sections 11 and 12 of The Audit Act and Section 23 of The Financial Administration Act, which sections are annexed to this Report as Schedule "F" there is no authority for a Ministry to make an ex gratia payment to persons on the authority of a report and recommendation of the Ombudsman. For example, Section 23 of The Financial Administration Act provides that if any public money is directed by "other lawful authority to be paid" and no other provision is made respecting it such money is payable under the warrant of the Lieutenant Governor directed to the Treasurer, out of the consolidated revenue fund. In the Deputy Attorney General's opinion a recommendation of the Ombudsman is not other "lawful authority".

Likewise Section 12 of The Audit Act permits the payment

of a sum of money out of the consolidated revenue fund on account of "any purpose connected with the administration of justice in either civil or criminal matters". In the Deputy Attorney General's opinion a recommendation of the Ombudsman is not included in such purpose. Implicit in the Deputy Attorney General's opinion, is the view that the Ministry of Government Services in this matter, had incurred no legal liability as a result of the actions of any of its representatives.

In other words, unless the Ministry of the Attorney General gives a governmental organization an opinion that the decision, recommendation, act or omission, which is the subject matter of the Ombudsman's recommendation, has created an obligation in law to make a money payment to the complainant, the governmental organization is not obligated to take any action or steps to implement the Ombudsman's recommendation. As an example, the Ombudsman may formulate an opinion pursuant to Section 22(1) that the decision, recommendation, act or omission was wrong, but not in any legal sense, and make a recommendation pursuant to Section 22(3) that a money payment be made by the governmental organization to the complainant, and the governmental organization would be under no obligation to take any action pursuant to the recommendation.

The Committee concurs in the opinion of the Deputy Attorney General that there are circumstances wherein a governmental organization lacks the statutory authority to give effect to a recommendation of the Ombudsman for a money payment, where no "legal authority" exists. However, in the Committee's opinion, the Legislature never intended that such a gap would exist in the Ombudsman's ability to exercise his functions under the Act. Nor was it ever

intended that the Ministry of the Attorney General would serve as the vehicle to advise governmental organizations on whether they had a "legal authority" to implement particular recommendations made by the Ombudsman.

The Committee can perceive circumstances wherein a recommendation made by the Ombudsman to a governmental organization for the payment of a sum of money in the absence of any legal authority, would be, in the opinion of all concerned, the most adequate and appropriate result. To permit this gap to exist only tends to frustrate the Ombudsman's ability to fully carry out his functions and to frustrate governmental organizations' ability to adequately and appropriately respond to recommendations made by the Ombudsman.

Accordingly, the Committee recommends that The Audit Act and The Financial Administration Act be amended to provide that when such a recommendation made by the Ombudsman after all necessary and appropriate requirements of The Ombudsman Act have been adhered to by his office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund.<sup>(34)</sup> In making this recommendation, the Committee does not intend that a recommendation of the Ombudsman is to be considered legally binding or equivalent to a judgment of a court. Nor does it intend that any lawful authority is created until the process intended by The Ombudsman Act of the Ombudsman's recommendation and the governmental organization's response, has been completed resulting in the governmental organization's

acceptance thereof and agreement to the amount in question.

The Committee noted that the Deputy Minister of Government Services after receiving the opinion of the Deputy Attorney General, terminated any further discussions with the Ombudsman's office on the merits of the Ombudsman's recommendation. At the suggestion of the Committee, the Ombudsman's office and the Ministry of Government Services have agreed to resume discussions on the merits of the recommendation, in any event of the opinion of the Deputy Attorney General and in any event of any amending legislation required. It is understood that these discussions will take place between the Ombudsman and the Deputy Minister of Government Services personally and they will report in due course to the Committee on the results of those discussions.

### 13. Ministry of Housing

Complaint #81 at page 619 of the Ombudsman's Second Report contains recommendations that the regulation enacted under The Housing Development Act R.S.O. 1970, Chapter 213, be amended so as to permit the Ministry to grant this particular complainant's application for an Ontario Home Renewal Plan grant, by overriding a decision already taken by the local municipality refusing the application. Up until the time the Ombudsman tabled his Second Report in the Legislature, the Minister of Housing considered the Ombudsman's recommendations to have merit and he accordingly instructed his staff to take a closer look at the feasibility of such an amendment. After an evaluation was made by the Ministry, however, the Minister concluded the the Ombudsman's recommendations were not feasible.



The Deputy Minister of Housing, when he appeared before the Committee, tabled and read from a prepared statement raising for the first time the issue of the Ombudsman's jurisdiction to investigate and make recommendations in respect of this complaint. Attached hereto as Schedule "G" to this Report is a copy of the Deputy Minister's statement for the information of all members. The Committee understands the substance of the Ministry's position to be that because the subject matter of the complaint is a decision, recommendation, act or omission of the particular municipality in refusing to grant this complainant's application, it is a matter concerning local government and beyond the jurisdiction of the Ombudsman. In any event of the question of jurisdiction, the Ministry of Housing takes the position that the local municipality acted properly in refusing the application on the grounds that the circumstances of the application did not come within the requirements of the regulations.

The Committee is of the opinion that the Ombudsman does in fact lack jurisdiction in respect of this complaint and accordingly was without authority to make a recommendation to the Minister of Housing pursuant to Section 22 of The Ombudsman Act.

That notwithstanding, and in any event of the position taken by the Deputy Minister of Housing respecting the Ombudsman's recommendations, the Committee notes the comments of the Deputy Minister at pages 15 and 16 of his statement wherein he can find:

"Considerable merit in extending the program to those cases where the improvements to the house will enable the owner to take up

occupancy in an otherwise uninhabitable dwelling unit".

These comments were made by the Deputy Minister in the context of a study presently underway by the Ministry respecting the matter of amendment and expansion of the present program. The Committee is of the opinion that if the program is extended into this area it would reduce the inequity as perceived by the complainant and the Ombudsman in this particular case. Accordingly, the Committee recommends that the Ministry of Housing effect amendments to The Ontario Home Renewal Program so as to exclude the requirement of occupancy as a test of eligibility where improvements to the house in question will enable the applicant to take up occupancy in an otherwise uninhabitable dwelling unit. (35)

With respect to this particular complaint, the Committee hopes that when the appropriate changes are made to the program, the municipality in question would consider more favourably a fresh application if made.

The Committee is concerned as to the timing wherein the Ministry of Housing raised the matter of jurisdiction. Had this question been considered by the Ministry and discussed with the Ombudsman at the very early stages of the complaint a great deal of time of the Ombudsman's office, the Ministry of Housing and this Select Committee would have been saved. Accordingly, this Committee recommends that hereafter all governmental organizations receiving notices from the Office of the Ombudsman of his intention to investigate pursuant to Section 19(1) of The Ombudsman Act, review and determine and make known to the Ombudsman their position

immediately with respect to jurisdiction.<sup>(36)</sup>

#### 14. Workmen's Compensation Board

##### (a) Complaint #135 at page 703 of Ombudsman's Second Report

In this case the Ombudsman investigated a complaint by an injured workman that the Workmen's Compensation Board had terminated his entitlement to benefits and that the Board ought to provide further assistance to him in obtaining suitable employment. The Ombudsman, after his investigation was completed, concluded that the Board had been very fair in dealing with this complainant in respect of financial benefits provided. However, he recommended that the Rehabilitation Department of the Workmen's Compensation Board take an active and intensive role in facilitating this person's return to the labour force in the form of a rehabilitation program to last for a period of six months.

The Ombudsman's recommendation was considered by a panel of Appeal Commissioners of the Workmen's Compensation Board who decided that it could not accept the Ombudsman's recommendations for essentially two reasons. Firstly, that providing rehabilitative services to a person who has previously been disentitled to further compensation benefits is contrary to Board policy and subject to certain legislative obstacles. Secondly, in the Board's opinion further assistance to this person would not be in his best interests and would not ultimately assist in finding him suitable employment.

However, representatives of the Workmen's Compensation Board conceded to the Committee that notwithstanding the current

Board policy respecting the granting of rehabilitative services, it has granted such benefits on previous occasions without necessarily conferring a financial benefit, when the Board considered it in the best interests of the workman so to do.

The Committee cannot support the recommendation of the Ombudsman for reasons previously set forth (page 36). However, the Committee is concerned that the Workmen's Compensation Board has given the Ombudsman apparent reasons for its refusal to implement a recommendation which are not in fact valid. The policy of the Board referable to the granting of rehabilitative services has clearly been abridged on previous occasions and there are no legislative obstacles to prevent the Ombudsman's recommendations from being implemented. In the final analysis, the Board's decision was solely on the fact of the particular case and as such it should have so advised the Ombudsman so that he might have assessed the Board's response in that context.

The Committee is further concerned that notwithstanding the Board's reasons for refusing the Ombudsman's recommendation the complainant is still unemployed some fifteen (15) months after the Board reached its decision. In the Committee's opinion, the Board has a duty to reconsider pursuant to Section 75 all decisions made by it previously, including its response to the Ombudsman's recommendation, with a view to providing this person with whatever assistance is available from the Workmen's Compensation Board to permit this person to return to the work force. The Committee therefore recommends that the Workmen's Compensation Board conduct a hearing in accordance with that Section exercising all its



powers of discretion and equity that the present circumstances of this claim warrant. <sup>(37)</sup> In these times of high unemployment, the Committee does not consider the Workmen's Compensation Board to have the luxury to refuse to assist someone in returning to the work force because of a technical non-compliance with some established, but not binding, policy.

The recommendation made by the Committee to the Workmen's Compensation Board is not to be taken as a preference of the Ombudsman's position over that of the Board's. It is rather a recognition by this Committee that after some twenty-two (22) months since this person came to the Ombudsman's office he is still seeking the assistance of the Board and is still seeking employment. In the Committee's opinion notwithstanding its formal position respecting the recommendation of the Ombudsman, it has a duty to assist, in whatever way it considers appropriate, the Ombudsman and the Board to resolve the continuing difficulties of this complainant.

The Committee also notes that whereas the response of the Workmen's Compensation Board was received by the Ombudsman on or about the 30th of August, 1976, the Ombudsman's reply to the Chairman of the Workmen's Compensation Board on what action he intended in respect of that response was not made for some eight (8) months. The Committee considers this delay inordinate in the circumstances. Accordingly, it recommends that the Ombudsman in all cases reply to a governmental organization's response to his recommendation within a reasonable time. <sup>(38)</sup>

(b) Complaint #136 at page 705 of Ombudsman's Second Report

The specific recommendation made by the Ombudsman to the Workmen's Compensation Board in this case was that a previous decision of an appeal panel be varied and that the complainant be granted temporary total disability payments for a period of time lost from work. In the Ombudsman's opinion, the symptoms causing the complainant to be absent from work during this period were identical to those suffered by the complainant in a previous period for which benefits were paid.

The Board rejected the Ombudsman's recommendation essentially on the ground that, in its opinion, the complainant had returned to her "pre-accident state" and accordingly the symptoms sustained during the period in question were not identical to those experienced during the previous period when disability payments were paid.

The Committee had great difficulty in its review of this matter and in sorting out the positions taken by both the Ombudsman and the Workmen's Compensation Board. In the Committee's opinion the confusion was due in part to the manner in which the Ombudsman's office conducted this investigation. That is, the Ombudsman forwarded two letters of recommendation dated June, 1976 and March 22, 1977 both apparently pursuant to Section 22 of The Ombudsman Act; one letter sent pursuant to Section 19(3) of The Ombudsman Act dated January 19, 1977 after the first letter of recommendation was sent but before the second; conducted at least two sets of investigations and held at least two "in house" conferences wherein the Ombudsman formulated opinions and

recommendations pursuant to his powers under Section 22 of The Ombudsman Act. The Board, in response to the various communications from the Ombudsman's office, has made a total of four responses to the Ombudsman on the substance of the recommendation.

On the other hand, the Committee considers the grounds upon which this complainant originally was granted benefits to be a source of confusion in the mind of this complainant and the Office of the Ombudsman. That is, the Board originally granted entitlement to benefits for the symptoms causing the original absence from work through a terminology of "aggravation by the work incident". The very description of the "cause" is capable of fostering, in the mind of the claimant, the expectation that every time the symptoms recur there is an entitlement to benefits. The Committee notes that this expectation was also fostered in the minds of members of the Ombudsman's staff.

The Committee regrets the state of confusion that existed both in the manner in which this complaint was processed by the Ombudsman's office and the original classification of this person's disability by the Workmen's Compensation Board. The Committee has no doubt that these matters have in some way contributed to the fact that this complaint is still unresolved.

For reasons already expressed, the Committee cannot support or recommend the Ombudsman's recommendation to the Legislature. However, the Board has adopted a rather strict application of its powers by rejecting benefits to the complainant notwithstanding that the symptoms causing the absence from work for the period in question appear to have been a direct result



of an "aggravation by the work incident". The Board has, by its response to the Ombudsman, in effect required the complainant to treat every recurrence of symptoms by reason of aggravation as a "new injury". In the Committee's opinion, the issue is not really whether the symptoms suffered by the person are compensable under The Workmen's Compensation Act, but whether they are to be processed by the Board within the original claim made by the claimant or a new claim not yet made.

The Workmen's Compensation Board has wide powers of discretion under Section 75 of The Workmen's Compensation Act to reconsider any previous decision made by it and "vary, amend, or revoke such decision". Notwithstanding the Committee's position respecting the Ombudsman's recommendation it cannot totally agree with the strict position taken by the Board in this circumstance. Accordingly, it recommends that the Workmen's Compensation Board reconsider this case pursuant to Section 75 of The Workmen's Compensation Act exercising its powers of inquiry to obtain all relevant evidence respecting the nature of and status of the symptoms suffered by this complainant within the period in question with a view to determining whether the symptoms complained of were caused by the "aggravation by the work incident".<sup>(39)</sup> If this be the case, the Committee recommends that the Board should then exercise its powers pursuant to Section 75 in favour of an award to this complainant without requiring the person to engage in the Board's entire process of a new claim.<sup>(40)</sup>

PART III

CONTINUING FUNCTION OF THE SELECT  
COMMITTEE ON THE OMBUDSMAN

The concept of the Ombudsman as a part of the parliamentary system of government in Ontario is barely two years old. As such, it continues to be the subject matter of much discussion, interpretation, criticism, and commendation. Additionally, because of the novelty of this concept in the context of our system of government, it is a matter of continuing evolution and development.

Because of the newness of the office and the policies adopted by the incumbent Ombudsman with respect to his functions, it has been both a source of confusion and misunderstanding. The Ombudsman has himself sought the advice and assistance of the Committee in matters wherein he and his staff have had no previous insight and experience.

For all of these reasons, the Committee perceives its role, among others, on a continuing basis, to interpret for all concerned, the concept of the Ombudsman in the context of our system of government and to help all persons concerned understand, appreciate and participate in the operation, organization and development of the office.

To fully and properly carry out this role, this Committee perceives a need for its continuing education in matters relating to the concept of Ombudsmen, both practical and theoretical. With this expanded knowledge and experience the Committee will best be able to serve the Ombudsman, the members of the Legislative

Assembly and the people of the Province of Ontario.

PART IV

EXPANSION OF ORDER OF REFERENCE  
OF THE SELECT COMMITTEE

Recommendation #29 of the Second Report of the Select Committee provided that:

"The Order of Reference of this Select Committee be expanded to provide that it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate". (page 49, Second Report)

The Committee views this recommendation to be of utmost priority. Accordingly, it recommends that the Legislature pass an Order of Reference so amending during this session of the Legislature. (41)

In any event of its expanded Order of Reference dealing with Ombudsman estimates, it will be required by reason of the number and volume of reports emanating from the Ombudsman's office, to sit concurrently when the Legislature is in session. Accordingly, it recommends that its Order of Reference be further amended to give it the authority to sit on such occasions as it deems appropriate concurrently with the Legislature. (42)

SCHEDULE A

SUMMARY OF RECOMMENDATIONS

1. Accordingly, this Committee recommends that the Government cause the Commission's report to be submitted forthwith and that immediately thereafter a Commission of Inquiry or other suitable forum be appointed under The Public Inquiries Act, 1971 with terms of reference identical to the agreement between the Minister of Housing and the Ombudsman dated October 1, 1976, such Order-In-Council to append as schedules thereto the said agreement and the transcript of the Select Committee's proceedings dated October 1, 1976. Further the Order-In-Council to provide that the Commission or forum actively inquire into the issues relevant to the former landowners and the property acquisition agents, that the Commission or forum retain its own counsel to assist it in the investigation, preparation and presentation to it of all relevant evidence. With respect to the phrase "adversarial nature", it should be given the identical context in the Order-In-Council as it is given in the agreement of October 1, 1976 and as interpreted by the Court of Appeal in its judgment released April 1, 1977. (Page 13)
2. The Ombudsman and his office define more precisely appealable decisions from governmental organizations, provide as many examples thereof as possible from the experience of the office to date to the Ministry of the Attorney General and thereafter conduct meetings with the Ministry of the Attorney General. (Page 16)
3. The Minister of Correctional Services make the

Ombudsman's Correctional Services Report public as soon as it is received by him in final form in order that it might be reviewed and subsequently reported upon to the House by the Select Committee on the Ombudsman. (Page 18)

4. An amount be received and approved as part of the Ombudsman's estimates required to find a complete management study for the Office of the Ombudsman by a firm or individual chosen by the Ombudsman in accordance with the required proposal and tendering procedures of the Manual of Administration. (Page 21)

5. The Ombudsman in choosing the management consultant best suited to perform the service intended, secure the term of the retainer, that the consulting firm upon completion of the study and service, furnish him with a "Report" which will summarize the format of the study, the findings of the study, the recommendations, suggestions, clarifications, improvements, and matters initiated within the study, and present it to the Ombudsman's office, together with a summary of those recommendations, suggestions, clarifications, improvements, and matters initiated by it which have been implemented by the Ombudsman, together with a summary of those recommendations which have not been implemented with reasons, if known to the management consultant. (Page 22)

6. The Ombudsman table the report referenced in Recommendation #5 with the Committee forthwith upon receipt thereof by him so that the Committee can continue its review and consideration of the matters relating to the organization and operation of his



office. (Page 22)

7. The Ombudsman specifically address the management consultant whom he may retain to the trends referable to his office's ability to process complaints as evidenced by the comprehensive statistical summary contained in his Second Report, for specific attention and treatment as part of the management consulting process. (Page 23)

8. The Ombudsman forthwith amend his policy relating to the time spent by his office on non-jurisdictional matters so as to reduce the time his staff spends on this type of complaint. (Page 29)

9. The Blueprint of the Ombudsman, in whatever stage it presently exists, be produced to the management consultant who may be chosen to perform the management consulting services. (Page 31)

10. The Ombudsman in conjunction with the management consulting firm chosen, integrate this Blueprint with the result of the management study and thereafter table it, together with the Blueprint provided to the management consultant in accordance with Recommendation #9, with this Committee for review as part of its continuing consideration of the organization and operation of the Office of the Ombudsman. (Page 31)

11. The Ombudsman include in the case summaries contained in his subsequent reports the following:

- (a) an identification of the complaint received in writing indicating whether it is one or a combination of a decision, recommendation, act or omission of a governmental organization;
- (b) particulars of the Ombudsman's decision to investigate pursuant to Section 15(2) with reasons therefor, if any;
- (c) a summary of the investigation undertaken with special reference to the provisions of Sections 19 and 20 employed by the office in the circumstances;
- (d) if any notification has been sent to the governmental organization pursuant to Section 19(3) a description of the notice together with a description, if any, of what representations had been made to the Ombudsman by those affected;
- (e) the specific opinions reached by the Ombudsman after the investigation has been made pursuant to Sections 22(1) or 22(2) with concise reasons therefor;
- (f) the specific recommendations made to the governmental organization pursuant to Section 22(3) with concise reasons therefor;
- (g) the response, if any, received from the governmental organization in respect of his recommendations and a statement by the Ombudsman whether in his opinion the response is adequate or appropriate;
- (h) a report on any meetings held by the Ombudsman with the Premier in respect of any recommendations denied;
- (i) if a decision is made by the Ombudsman not to refer the matter to the Premier reasons therefor;
- (j) a statement by the Ombudsman of what he wishes the Committee to address itself to in considering a particular complaint and what recommendation, if any, he would like the Committee to make to the Legislature;
- (k) where a finding has been made in favour of the governmental organization, items (a) through (c) inclusive and item (j) should be contained in the case summary. (Pages 39-41)

12. The Ombudsman's office revise its terminology in reporting line summaries of complaints so that the risk of



misinterpretation by the public as to the conduct of the governmental organization is eliminated. (Page 41)

13. The Ombudsman re-open Complaint #5 at page 500 of his Second Report to consider whether all complaints arising out of this case have been fully investigated and to consider whether any re-emphasis of investigation might permit the Ombudsman to formulate opinions and make recommendations pursuant to Section 22 of The Ombudsman Act. (Page 46)

14. The Ministry of the Attorney General effect a centralized scheme whereby licences that have been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines. (Page 47)

15. The Ombudsman and his office keep the Ministry of Consumer and Commercial Relations informed of any further examples of perceived hardship to individuals as a result of the seven year period contained in The Consumer Reporting Act. (Page 50)

16. In the event the numbers of complaints increase with respect to the seven year reporting period the Ministry forthwith effect a study on the merits of reducing the period to one which will reduce the degree of hardship while preserving the purpose and substance of the legislation. (Page 50)

17. The Ministry of Consumer and Commercial Relations table, during this current session, an amendment to the Vital

Statistics Act deleting the present requirement of registration that the father's name precede that of the mother's respecting the surnames of their children, thus affording the parents the option of choosing the order of the surnames. (Page 51)

18. The Minister of Consumer and Commercial Relations introduce legislation clarifying and defining the status of persons affected by the sex designation change and the proposed amendment to the Vital Statistics Act so as to avoid the creation of a third category of persons in the Province of Ontario. (Page 52)

19. In all subsequent reports the Ombudsman, except to the extent he considers it necessary pursuant to Section 13(2) of The Ombudsman Act, not disclose the identity of penal institutions from which complaints originated. (Pages 52-53)

20. The Ombudsman forthwith take such steps as are necessary within his office to instruct his staff to hereafter refrain from commenting to representatives of governmental organizations as to the suitability and competence of servants, agents or employees of the government organization. (Page 53)

21. The Ministry of Correctional Services undertake a continuing educative program for the administrative staff who issue temporary absence passes so that the regulations can be interpreted as consistently and as equitably as possible over the entire province. (Page 54)

22. The Ministry of Correctional Services complete its review of the policies concerning hearings in respect of disruptive behaviour and effect as soon as possible a new policy satisfying the terms of Recommendation #13 of the Second Report of the Select Committee. (Page 56)

23. The Ministry of Education forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as a result of participation in shop classes and in organized athletic activities. (Page 57)

24. The Ministry of Government Services table appropriate legislation in the Legislature during this current session removing the present restriction on the total current earnings of a provincial superannuate. (Page 58)

25. The Ministry of Health forthwith formulate procedures in the area of "escorted privileges" of the type and nature of the procedure presently in force at the psychiatric hospital referenced by Complaint #69 in the Ombudsman's Second Report, for general application in psychiatric hospitals throughout Ontario. (Page 62)

26. During the period of time, provided that it is reasonable, that the Ombudsman is waiting upon action, steps or

response from a governmental organization to a recommendation made by him, no further act in the nature of investigations of the particular complaint be undertaken by his office without the express knowledge of the head of the governmental organization in question. (Pages 62-63)

27. The booklet or information circular referred to in Recommendations #3 and #4 of the Committee's Second Report be expanded to include a description and explanation of the entire process of Workmen's Compensation in Ontario, and that such booklet be distributed to all persons receiving the Board's Form H1 letter. (Page 68)

28. The Workmen's Compensation Board consider whether, in view of Recommendation #26 above, its booklet entitled "Claims Information for Employees + Employers" is no longer necessary. (Page 68)

29. The Workmen's Compensation Board complete as quickly as possible its review of its policy regarding disclosure of its files to the claimant personally. (Page 68)

30. The Workmen's Compensation Board consider and report to this Committee whether the appeal system as amended will serve to satisfy the substance of the objectives intended by the Board's study group of the one-level system as recommended, such objectives as set out in pages 5 and 6 of Appendix I of the Report and Recommendations to the Commissioners. (Schedule "E") (Page 70)

31. The Workmen's Compensation Board in conjunction with the Ministry of Labour forthwith cause an amendment to be tabled in the Legislature to the Workmen's Compensation Act, specifically authorizing the Board to recover or write-off, as the case may be, overpayments made to workmen. (Page 72)

32. The Workmen's Compensation Board effect changes in its procedures for the recovery of overpayments and that those procedures contain provisions wherein the particular circumstances of the workman is considered and that the arrangements, if any, for repayment of monies be tailored to the workman's particular ability to repay. (Pages 72-73)

33. The Ombudsman in his next report state the reasons why he decided not to investigate further the issue of the miscalculation of benefits payable to workmen as found in Complaint #132 of his Second Report. (Page 74)

34. The Audits Act and The Financial Administration Act be amended to provide that when the Ombudsman, after all necessary and appropriate requirements of The Ombudsman Act have been adhered to, makes a recommendation to a governmental organization for the payment of a sum of money, in the absence of any other express legal authority, and when the recommendation is entirely accepted by the governmental organization, a "lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. (Page 77)



35. The Ministry of Housing effect amendments to the Ontario Home Renewal Program so as to exclude the requirement of occupancy as a test of eligibility where improvements to the house in question will enable the applicants to take up occupancy in an otherwise uninhabitable dwelling unit. (Page 80)

36. Hereafter all governmental organizations receiving notices from the Office of the Ombudsman of his intention to investigate pursuant to Section 19(1) of The Ombudsman Act, review, determine and make known their position immediately with respect to jurisdiction. (Pages 80-81)

37. The Workmen's Compensation Board conduct a hearing in accordance with Section 75 of The Workmen's Compensation Act of the matters referenced by Complaint #135 of the Ombudsman's Second Report, exercising all its powers of discretion and equity that the present circumstances of this claimant warrant. (Page 83)

38. The Ombudsman in all cases reply to a response made by a governmental organization to his recommendation within a reasonable time. (Page 83)

39. The Workmen's Compensation Board reconsider the decisions made by it previously respecting the claimant referenced by Complaint #136 of the Ombudsman's Second Report, pursuant to Section 75 of The Workmen's Compensation Act, exercising its power of inquiry to obtain all relevant evidence respecting the nature of and status of the symptoms suffered by this person within

the period in question with a view to determining whether the symptoms complained of were caused by the "aggravation by the work incident". (Page 86)

40. If the symptoms were caused by the aggravation by the work incident the Board should exercise its powers pursuant to Section 75 in favour of an award to this complainant without requiring the person to engage in the Board's entire process of a new claim. (Page 86)

41. The Legislature pass an Order of Reference amending the Order of Reference of the Select Committee to provide that it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate, during this session of the Legislature. (Page 88)

42. The Order of Reference of the Select Committee again be amended to give it the authority to sit on such occasions as it deems appropriate concurrently with the Legislature. (Page 88)





SCHEDULE B

RECOMMENDATIONS CONTAINED IN THE SELECT  
COMMITTEE'S SECOND REPORT CONSIDERED  
BY THE COMMITTEE IN THIS REPORT

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26

FEASIBILITY STUDY  
FOR  
MANAGEMENT CONSULTING SERVICES

General

The purpose of this study is to define the feasibility of the management study in order that a request for proposals meets the requirements of the Manual of Administration Directive on Management Consulting Services 50 -3.

The Problem

The Office of the Ombudsman is presently faced with a situation, wherein, the limited resources available to the Office must be better utilized in order to ensure that the rapid growth in the volume of complaints does not result in a reduction in service to the public.

The organizational structure and complaint handling practices of the Office of the Ombudsman have been developed over the last two years to meet a high continuous demand for complaint handling services that has persisted from the inception of the Office in May of 1975. The demand for these services has exceeded initial expectations and as with other public sector organizations remains as a largely uncontrollable factor. However, in the face of an open ended demand situation the Office of the Ombudsman is required to provide services with resource limits imposed by the office's annual budget.

Recognizing these limitations, the Ombudsman and his senior staff view the large backlog cases (2,500), the lengthening in the average duration to closing from 63 days to 75 days and the continuing high influx of complaints (554 per month) as strong evidence that the existing organization and practices of the office could be improved to meet the ever-increasing demand for complaint handling services.

Objective

The Office of the Ombudsman requests proposals for a program initiated and coordinated by outside consultants which is designed to meet the overall objective of improving the efficiency and effectiveness of the complaint handling services of the office.

Generally speaking, the program proposal should outline a methodology designed to identify specific problems in the areas of organizational structure, human resource utilization, and office methods/procedures. In addition, the program should address itself to developmental issues such as the

Feasibility Study  
for  
Management Consulting Services

- 2 -

organizational, procedural and budgetary impact of the expanded jurisdiction contemplated in the Ombudsman's Reports to the Legislative Assembly. Finally, all recommendations for improvements to the office should be accompanied by an analysis of their impact on all levels of service, their cost effectiveness, and their suitability from an implementation viewpoint.

Without in any way restricting the possible scope of inquiry conducted by the Management Consulting Service among the matters that should be considered by the study are:

1. The development of guidelines and recommendations designed to improve upon the existing organizational structure of the Office of the Ombudsman.
2. The development of guidelines and recommendations with the aim of defining clear organizational goals and standards for complaint handling services.
3. The development of guidelines and recommendations that will provide a basis for defining the roles, responsibilities and the delegation of duties as they relate to the Ombudsman, senior staff and other staff engaged by the office.
4. The development of guidelines that will provide a basis for the establishment of policies to govern the allocation of human resources.
5. The development of recommendations with respect to the advisability of the creation of second-in-command or chief operating officer position within the office.
6. The development of guidelines that will provide a basis for a communications policy designed to meet the defined organizational goals of the office.
7. The development of guidelines and recommendations for the improvement of complaint handling procedures.
8. The development of a system designed to provide management with complaint work load and expenditure forecasting information.
9. The development of guidelines to improve administrative and operational support services.
10. The development of guidelines to improve the individual and collective management processes.

11. The development of guidelines and recommendations with respect to the organizational, procedural and budgetary impact of the expanded jurisdiction contemplated in the Ombudsman's Reports to the Legislative Assembly.

Terms of Reference

The program proposals should be explicit in the following areas:

- (a) The time required for the completion of the program.
- (b) The method and frequency of reports from the management consultants.
- (c) The methods employed to involve all levels of staff in the program which will provide sufficient staff involvement and will ensure that current levels of service to the public are not diminished as a result of excessive staff commitments to the program.
- (d) The methods proposed to implement the guidelines and recommendations of the study.
- (e) The background of members of the consulting team.
- (f) The cost of the program.

It is the opinion of the Ombudsman and his senior staff that skilled resources and personnel which would be required to conduct such a management study are not available for this project from within the Office of the Ombudsman.







35. Purchase and Management of  
Goods and Services-General  
Policies

4. Competitive Purchasing

COMPETITIVE PURCHASING

The following directive was approved by Management Board on March 26, 1974, and came into effect immediately.

PURPOSE To promote fair supplier competition and optimize value and service for public monies expended.

Product and/or Service Requirements shall be defined, whenever possible, in terms of performance, design, or generic specifications in order to encourage supplier competition.

To simplify the procurement process, standard purchase specifications shall be developed whenever feasible for high volume and high value repetitively required items.

Suppliers The suppliers invited to quote shall be selected in an objective and equitable manner.

Vendor lists shall be maintained by ministries and agencies and shall be used for selecting the suppliers invited to quote.

Interested suppliers shall be given a fair opportunity to bid on Government business.

Minimum of Three Quotes A minimum of three quotes shall be solicited unless explained in writing or explicitly covered by ministry policy.

Purchasing policies of ministries and agencies shall describe any exclusions to the three quotation requirement (such as petty cash or small value transactions.)

Formal Procedures Formal procedures for supplier quotations and invitations to tender shall be used when requirements exceed prescribed limits or meet other criteria as determined by ministries and agencies.

Ministries and agencies shall describe in their purchasing policies criteria for determining which procedures will be used.

When necessary to ensure equitable opportunity for suppliers, advertising may be used.

Documentation Documentation is required for all supplier quotations.

Public Opening of Tenders Public opening of tenders shall take place whenever practical where the estimated purchase price exceeds prescribed limits or meets other specified criteria as determined by ministries and agencies.

Ministries and agencies shall describe in their purchasing policies the criteria which determine when tenders will be publicly opened.



4. Competitive Purchasing

Public Opening  
of Tenders  
(Continued)

Generally multiple item and multiple destination tenders may be excluded from public opening to avoid possible misinformation.

Only the bidder's name, address and the amount of the bid need be disclosed at public tender openings.

Selection of the  
Successful  
Supplier

The evaluation of bids shall be based on objective and defensible criteria established by ministries and agencies.

Ministries and agencies shall describe in their purchasing policies the criteria to be used in evaluating tender submissions.

Bids shall be compared on the basis of full costs, including direct delivered, indirect, carrying, contingent and overhead costs.

Reasons for the non-acceptance of the lowest responsible bid shall be documented.

Ministries and agencies shall describe in their purchasing policies the levels of authority required to approve non-acceptance of the lowest responsible bid.

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REPORT AND RECOMMENDATION OF THE COMMISSIONERS  
TO THE CORPORATE BOARD WITH RESPECT TO THE APPEALS SYSTEM

---

SCHEDULE E

Statement of the Problem:

The Appeals System in effect since January 10, 1975 has demonstrable problems. The major problems are:

- A. There is a significant time lag between receipt of appeal and final resolution of the issue.
- B. The practice of placing the responsibility on one person (a Commissioner) of making a decision on a matter heard by another (an Appeals Examiner) is questionable in law and unsatisfactory in operation.
- C. The System results in repetitious Hearings often without significant new information or argument.
- D. The System also results in unreasonable and unnecessary expense for the Accident Fund and for employers and representatives of parties.

Detail:

1. We have considered a report prepared by the Study Group appointed by the Vice-Chairman of Appeals, see Appendix I. While not all of the Commissioners necessarily agree with all of the procedural and administrative details contained in the report, we are in agreement (Mr. D.G. Decker contra, Mrs. M.H. Russell absent) with the main recommendation

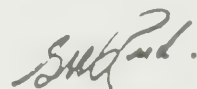
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that the first step in the present Appeals System should be eliminated and that all appeals should be dealt with by a three person panel, with final decision making authority, subject to an Application for Re-consideration under Section 75 of The Workmen's Compensation Act.

2. We note the opinion of the Board's Solicitor and General Counsel that The Act would not have to be amended to give effect to the report of the Study Group, see Appendix II.
3. We appreciate the fact that the Board may wish to canvass the opinion of various interested groups with respect to any proposed re-organization of the Appeals System. It is likely that any discussions would deal with the general proposal and not with the procedural and administrative aspects of such proposal.

Recommendation:

Having regard to the above considerations, we recommend, therefore, that the present Appeals System be re-organized to provide for a one step process consisting of Appeal Board Panels of three persons having final decision making authority, subject to Applications for Re-consideration under Section 75 of The Workmen's Compensation Act. (See Appendix III)



G. W. Reed, Q.C.  
Vice-Chairman of Appeals  
pro the Commissioners

April 4, 1977

REPORT AND RECOMMENDATION RE APPEALS SYSTEM

Statement of the Problem:

The Appeals System in effect since January 10, 1975 has demonstrable problems. The major problems are:

1. There is a significant time lag between receipt of appeal and final resolution of the issue.
2. There is criticism of one person judging matters frequently involving substantial areas of credibility.
3. The practice of placing the responsibility on one person (a Commissioner) of making a decision on a matter heard by another (an Appeals Examiner) is questionable in law and unsatisfactory in operation.
4. The System does not fully utilize the adjudicating skill and experience of the involved personnel.
5. The System results in repetitious hearings often without significant new information or argument.
6. The System also results in unreasonable and unnecessary expense for reporting services, travelling and other expenses for employees, witnesses, as well as costs to employers and representatives.
7. Necessitates repetitive handling of files, preparation of documentation, arranging and scheduling of hearings with the attendant administrative and clerical costs.

- continued -

Page 2

General Comments:

Task Force Report:

The Task Force Report which was the basis for the development of the present Appeals System had three basic criticisms of the former system:

1. Redundancy - there were three levels of appeal and two hearings were required.
2. Rigidity - each case had to proceed through the three levels.
3. Lack of Service Orientation - formality of the process and the hearing rooms. Failure of the Board to travel and make its presence manifest outside of Toronto.

Employers:

Generally critical of the system as:

1. Hearings at two levels are redundant -- expensive to them directly (appearing at two hearings) and also expensive indirectly as a cost to the fund.
2. The provision of two levels of appeal produces more decisions favourable to the employee.

Labour Groups:

Critical of the time lags involved between notice of appeal and final resolution, and of a system where a person decides who

- continued -



Page 3

has not heard the evidence and argument, but favour the two level hearing system as:

1. It produces a more comprehensive inquiry into the entitlement of an employee amplifying and often expanding the matters in issue.
2. Allows for a more reasoned and comprehensive presentation at the second hearing.
3. Produces more favourable decisions for the employee.

Legislators:

Members of the legislature express the greatest concern about the significant time lost between notice of appeal, the inquiry and resolution of matters in issue at a Board hearing.

Ombudsman:

It has been suggested by a representative of the Ombudsman that it could be advantageous to eliminate one step of the Appeals System - the Single Commissioner Decision.

Proposals:

Three proposals have been suggested for improvement of the system:

1. Modify the present single Examiner system by giving the Examiner the power to decide rather than recommend.

- continued -



2. Modify the present Examiner system by having Examiners sit in panels of three with the power to decide rather than recommend. Again retaining the present system.
3. Eliminate the Examiner level and have all matters requiring a hearing dealt with by a three person panel with final decision making authority subject to applications for re-consideration under Section 75 (see Appendix A).

Proposals No. 1 and No. 2:

Proposals one and two are not recommended. Proposal one because (a) it would not significantly reduce delay, (b) it continues the excessive cost and expense and (c) it continues the objectable one man adjudication. Proposal two because of reasons (a) and (b) above and it would require additional time and unavailable experienced personnel.

Proposal No. 3:

Proposal three is recommended for implementation as it meets all the objectives and overcomes all of the significant objections. It will require the appointment as Commissioners of the present Appeals Examiners (10).

Under this proposal, the full opportunity for a hearing will be met by a three member Appeal Board panel of Commissioners. The decision

- continued -

Page 5

of each such panel to be final and conclusive, subject to the provisions of Section 75 more specifically defined by Regulation or Board Order (see Appendix A).

This recommended system will:

- (a) Deal expeditiously with the experienced and anticipated volume with the present compliment of Commissioners, including the Appeals Examiners (21).
- (b) Produce a judgment from a panel of three, including persons experienced in compensation, adjudication and persons with practical experience beyond the Board.
- (c) It eliminates repetitive hearings as a matter of practice, substituting the controllable process of Section 75, as defined in Appendix A.
- (d) Reduce most significantly the time lost between notice of appeal and final resolution.
- (e) Materially reduce the expense and cost of the system, e.g., \$75,000.00 per annum for reporters, and other expense.
- (f) Reduce very considerably the costs to employers, representatives and others when only one hearing is involved as a matter of right.
- (g) Make the Board's presence apparent throughout the Province as each panel will have hearings outside as well as in

- continued -

Page 6

Toronto.

- (h) Produce more consistent application of policy and judgment.

It can be expected that some groups, particularly from labour, will not be enthusiastic about the elimination of the two level hearing system. While opinion is not unanimous on this matter, a shared opinion is that if the provisions of Section 75 as defined are explained satisfactorily, all parties would give this system an opportunity to demonstrate its effectiveness in reducing time lag and costs, and in the production of consistent and reasoned decisions.

Procedure - Proposal No. 3:

When an appeal is received in the system, it will be reviewed comprehensively by a Commissioner or other properly appointed person who will:

- (a) (i) Make sure that the matter is properly before the Appeal Board.
- (ii) Ensure that the matter has been fully prepared for appeal decision.
- (iii) If medical issue involved, assure that file has been reviewed by a medical consultant with medical summary and opinion on file.
- (b) Direct any action required to complete the file.

- continued -

Page 7

- (c) Consider whether a decision can be made from file and if so having given notice to and considered representations from any party adversely effected, write the decision referring that decision to two other Commissioners for concurrence, other decision and signature.
- (d) If satisfied a decision cannot be made from file, that matter shall be referred to the Registrar of Appeals to arrange a hearing.
- (e) The Vice Chairman of Appeals shall appoint a panel of Commissioners to hold a hearing and make a decision which shall be the decision of the Board.
- (f) The decision of the Appeal Board panel shall be final and conclusive except as provided by Section 75 as defined (Appendix A).
- (g) Any application under Section 75 shall be referred back to the panel constituted under (e) above or any other panel appointed by the Vice Chairman of Appeals. The panel so appointed, having given the appropriate notice to all parties of interest and considered any submissions received as a consequence of the notice, may with or without a further hearing, vary, amend or revoke the decision, order, declaration or ruling.

- continued -

Page 8

This proposed system will provide more comprehensive review and completion of file material before decision with or without hearing, more uniform and consistent judgment of issues, better utilization of the available personnel, significant reduction in time lag and costs, while producing better service to all involved parties.

If the Act is not to be opened, the recommendation for a one-step appeals process could be accomplished:

- (a) - By appointment of additional Commissioners from Board employees by Order-in-Council.
- (b) By Regulation or Board Order providing:
  - (i) For a one-step appeals process of an Appeal Board panel of three Commissioners.
  - (ii) For Single Commissioners or Inquiries to be used only if an Appeal Board panel so recommends after initial screening.
  - (iii) By defining grounds for re-consideration by the Appeal Board panel under Section 75 (Appendix A).

Information on staffing requirements is indicated in Appendices B & C.

March 17th, 1977



L.F. O'Brien, Commissioner  
pro the Study Group.

Appendix A

GROUND'S FOR RECONSIDERATION - SECTION 75

1. A question arises concerning the interpretation of the Workmen's Compensation Act, or of Board policy.
2. Obvious error in the decision.
3. Material evidence not previously presented.
4. The proceedings have been conducted in an improper or unfair manner.
5. The real justice and merits of the case requiring that it be reconsidered.

March 17th, 1977





Appendix B

PROPOSED APPEALS SYSTEM - STAFF REQUIREMENTS

Volume of appeals per year 3,200

Estimate based on:

1. Examiner input for 1976	3,058
2. Appeal Board Hearings for:	
86(7)	50
Commutations	50
Section 15	<u>30</u>
	3,188

Considering there is usually some small increase each year in claims and therefore appeals volume, and deducting for a percentage of cases decided without a hearing -- would estimate the maximum of 3,200 hearings scheduled per year.

Required hearings per week  $(\frac{3,200}{52}) = 62$

Required scheduled hearing appointments per week (30-40% postponement rate) = 100

5 panels hearing 4 per day, 5 days per week = 100

2 reserve panels -- to accommodate absences, desk/office time, travel time, extra time for Corporate Commissioners

Required establishment 7 panels x 3 = 21

Present establishment 12 Commissioners, 9 Examiners = 21

Travelling:

It would appear from this year's record (53) that if out of town hearings are to be held in the same principal centres as at present -- one trip a week is indicated -- resulting in one trip per month for each

- continued -

panel. With 5-6 panels and 5-2 spares available, no one person would be scheduled for more than one trip per month maximum under normal circumstances.

March 17th, 1977

APPENDIX C

PROPOSED ONE STEP APPEALS SYSTEM

VOLUMES, ONE YEAR

Appeals--Projected 3200

Basis of Projection:

For 1976:	To Examiners	3021
	Section 15	26
	Commutations	60
	Section 86(7) Hearings	42
	Total	<u>3149</u>

Appeals Concluded Without Hearing--Projected 200

Basis of Projection:

Presently 9 per cent of the incoming volume to the Examiners is concluded without Inquiry. In a one level system this percentage will be less as the employer must be allowed input before decision.

Appeal Board Hearings--Projected 3000

Appeal Board Decisions (not including Section 75 Applications) Projected 3200

Comment:

The equivalent decisions in the present system is estimated to be 4027. (During 1976 the Examiners held Inquiries or decided on 3021 appeals and the Appeal Board held 980 Hearings plus 26 Section 15, totalling 4027.)

Section 75 Applications--Projected 320

Basis of Projection:

In 1976 at year end, the Appeal Board had rendered 739 decisions. During the same period there were 71 Applications to Reconsider. Although these were not necessarily the same cases involved, the ratio is about ten per cent. Although more Applications would normally be anticipated in a one step system the proposed restriction of the grounds for Application may cause the ratio to remain about the same.

- continued -

Summaries of Information-Projected

1600

Basis of Projection:

There were 1100 requests for Summaries of Information in 1976 in relation to 3021 appeals at Examiner level which approximates a 1/3 ratio. It is anticipated there will be an increased demand for Summaries of Information in a one step system which is estimated at 50 per cent. In addition to Summaries of Information provided, 980 summaries of claims were composed in 1976 for the cases heard by the Appeal Board.

Transcripts-Projected. There will be no transcripts applicable prior to an Appeal Board Hearing.

Comment:

In 1976 it is estimated 500 transcripts were obtained on cases proceeding to an Appeal Board Hearing. This would not be applicable in the proposed system. The saving would be about \$50,000. At the start, while the new system deals with cases where there was an Appeals Examiner Inquiry or an Appeal Tribunal Hearing, transcripts will still be provided but this would phase out in time. Transcripts required following an Appeal Board Hearing would be similar to our present procedure although possibly with a higher number due to the projected increase in Section 75 Applications.

Court Reporter attendance costs and interpreting costs will be reduced proportionately to the 25 per cent reduction in Hearings which would eventually constitute a saving of \$24,000.per year.

STAFFING

Commissioners

3000 Appeal Board Hearings averages 58 accomplished Hearings each week. Based on the present postponement rate and anticipating an increase in a one step system, 30 to 40 per cent more Appeal Board Hearings must be scheduled.

Projection

Appeal Board Panel Hearings, Toronto, 4 per day, 5 days a week = 20 per week.

Appeal Board Panel Hearings, outside of Toronto, 2 Monday, 2 Friday and 4, three days a week = 16 per week.

5 operative Appeal Board Panels each week, 3 in Toronto, (3 x 20 = 60 Hearings), 2 outside of Toronto, (2 x 16 = 32 Hearings) will provide 92 Appeal Board Hearing appoint-

ments per week.

The time requirements for desk work, vacations and other absences, Applications to Reconsider, decisions without hearings, resolving cases following further enquiry after hearing, require an additional 2 Appeal Board Panels.

Projected Establishment (7 Appeal Board Panels) 21 Commissioners.

Present Establishment - 11 Commissioners excluding Vice-Chairman of Appeals, 9 Appeals Examiners = 20.

### Appeals Administrators

#### Projected Activities

Screening of incoming cases.

Preparatory work which includes external communications, provision of Summaries of Information on request.

Attendance on a selective basis at Appeal Board Hearings.

Decision drafting on request.

Post Hearing enquiry at the direction of the Appeal Board.

Controlling the activities in an appeal from when it is received until it is decided and a decision mailed.

Responding to post decision enquiries.

Preparation and referral of Section 75 Applications.

As the Appeal Board will be dealing directly with the file the only summary required will be on the request of a party to a Hearing. As Appeals Administrators will attend Appeal Board Hearings on a selective basis, more time will be available to carry out activities mentioned above as are done now. Restricting the activities of the Appeals Administrators may enable the present establishment of 7 to carry the projected workload.

### Clerical

The scheduling of 7 Appeal Board Panels, 5 fully operative each week, will be centralized under the Office of the Registrar, likely 3 secretaries will be required including the Secretary to the Registrar. It is considered the present establishment of 19 secretaries should be able to manage the workload in the projected appeal system

The Appeals Secretaries Grade 7 who presently type the decisions would continue to do so based on handwritten decisions or dictated tapes from the Commissioners.

D. Farquharson,  
March 25th, 1977.



INTER-DEPARTMENTAL COMMUNICATION

TO G. W. Reed, Q.C., Vice-Chairman Appeals  
FROM W. R. Riddell, Solicitor and General Counsel  
DATE April 1, 1977.  
SUBJECT

I have considered your Report and Recommendation re Appeals System dated March 17, 1977.

I am of the opinion that the Act does not have to be amended to give effect to your report.

I am also of the opinion that the Board does not have to ask the Lieutenant Governor in Council for regulations to give effect to the proposed procedural rules.

I would suggest that the following changes be made to Grounds for Reconsideration - Section 75 which is Appendix A to your report:

- (1) That your item 2, "Obvious error in the decision", be replaced by the sentence, "Obvious defect in the decision".
- (2) That your item 3, "Material evidence not previously presented", be altered to read "Substantial material evidence not previously presented".
- (3) I would respectfully suggest that your item 5 be deleted in its entirety as I believe it has been adequately covered in the first four grounds.

WRR/GMW

  
Solicitor and General Counsel.





GROUND'S FOR RECONSIDERATION OF AN APPEAL BOARD PANEL DECISION

- SECTION 75

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1. A question arises concerning the interpretation of  
The Workmen's Compensation Act, or of Board  
policy.
2. Technical defect in the Decision.
3. Significant evidence not previously presented.
4. The proceedings have been conducted in an improper  
manner.

Approved by the Commissioners following consideration of  
the Board Solicitor and General Counsel's comments (see  
Appendix II) on Appendix A or Appendix I.

April 4, 1977.



422

Chap. 166

FINANCIAL ADMINISTRATION

Sec. 23

How public  
moneys to  
be paid in  
certain  
circum-  
stances

**23.** If any public money is appropriated by an Act for any purpose or is directed by the judgment of a court or the award of arbitrators or other lawful authority to be paid by the Lieutenant Governor and no other provision is made respecting it, such money is payable under warrant of the Lieutenant Governor, directed to the Treasurer, out of the Consolidated Revenue Fund, and all persons entrusted with the expenditure of any such money or a part thereof shall account for it in such manner and form, with such vouchers, at such periods and to such officer as the Treasurer may direct. R.S.O. 1960, c. 142, s. 31.

Allowances  
for travel-  
ling and  
living  
expenses

**24.** The Lieutenant Governor in Council may make regulations fixing the scale of allowances for the travelling and living expenses to be allowed to any person employed in or in connection with any part of the public service. R.S.O. 1960, c. 142, s. 32.

Accountable  
advances

**25.**—(1) On the application of a minister, the Treasurer may authorize an accountable advance out of the Consolidated Revenue Fund for the purpose of meeting disbursements for travelling expenses or other contingencies or of making payments on account of expenses incurred or to be incurred. R.S.O. 1960, c. 142, s. 33 (1); 1968, c. 41, s. 15 (1).

Idem

(2) If, at the termination of the fiscal year in which an advance was made no accounting or repayment of the advance has been received, such advance shall be repaid or accounted for within thirty days thereafter. R.S.O. 1960, c. 142, s. 33 (2).

Authority  
for pay-  
ments of  
accounts for  
printing,  
stationery,  
etc.

**26.** The Treasurer may pay out of the Consolidated Revenue Fund accounts for legislative and departmental printing, paper and stationery and other supplies delivered to the Queen's Printer and Publisher, but the amount of such deliveries remaining on hand and in the course of distribution shall not exceed in any fiscal year the sum of \$1,000,000. R.S.O. 1960, c. 142, s. 34; 1965, c. 40, s. 4, *amended*.

Expenditure  
refunds

**27.** An amount received as a refund or repayment of an expenditure or advance and deposited to the credit of the Treasurer shall be included in the unexpended balance of the appropriation against which it was charged. R.S.O. 1960, c. 142, s. 35.

## PART IV

### PUBLIC DEBT

Interpre-  
tation

**28.** In this Part, "securities" means securities of Ontario, and includes Ontario Government stock, bonds, debentures, interest bearing and non-interest bearing treasury bills, notes and any other security representing part of the public debt of Ontario. R.S.O. 1960, c. 142, s. 36.

and all other papers, things or property belonging to or in use by the department and necessary to facilitate the audit and shall be afforded every facility for verifying transactions with the balances or securities held by depositaries, fiscal agents or custodians. R.S.O. 1960, c. 27, s. 7, *amended*.

Responsi-  
bility of  
ministers  
and officers,  
and audit by  
departments

**8.** Nothing in this Act shall be construed to affect the responsibility of any minister, deputy minister, departmental officer or other person charged with the administration of public moneys, and the responsibility for the conduct of the financial business of each department shall rest with the head of the department, and, before accounts are recommended to the Treasurer of Ontario for payment, they shall be checked and examined in detail and vouched as correct in every respect and allowed and passed by the proper departmental officers. R.S.O. 1960, c. 27, s. 8.

Auditor to  
examine  
expenditures

**9.—(1)** Except where otherwise provided, the Auditor shall examine on behalf of the Assembly all accounts of expenditure of public moneys out of the Consolidated Revenue Fund, whether held in trust or otherwise.

Purpose and  
authority  
for expendi-  
ture to be  
observed

**(2)** The Auditor shall satisfy himself that every account requisitioned for payment is in accordance with the terms and conditions of the grant to which the account relates.

Auditor may  
admit  
vouchers and  
examine in  
detail if  
requested

**(3)** The Auditor, after satisfying himself that a voucher has been examined and certified as correct by the department concerned, may, in his discretion and having regard to the character of the departmental examination, admit it as satisfactory, but, if the Treasury Board desires any voucher to be examined in greater detail, the Auditor shall do so. R.S.O. 1960, c. 27, s. 9.

Accom-  
modation  
for staff

**10.** The Auditor may station one or more members of his staff in any department of the public service to enable him to carry out his duties under this Act more effectively, and the department shall provide such accommodation as is required for the purpose. R.S.O. 1960, c. 27, s. 10.

Issue of  
cheques

**11.—(1)** Except as provided in this section or section 12, no cheque for the payment of public money shall issue without the certificate of the Auditor that there is legislative authority for the payment.

Upon advice  
of Minister of  
Justice and  
Attorney  
General

**(2)** When, upon an application for a cheque, the Auditor has reported that there is no legislative authority, then upon the written opinion of the Minister of Justice and Attorney General or Deputy Minister of Justice and Deputy Attorney General that there is legislative authority, citing it, the cheque may be issued.

(3) The authority to make an expenditure under a special warrant lapses and any unexpended balance shall be written off at the end of the fiscal year in which the warrant is given, except that during the period of thirty days next following the end of the fiscal year there may be paid an amount not exceeding the unexpended balance of the warrant for the purpose of discharging any debt that was incurred during such fiscal year, and such expenditure may be charged in the accounts of such fiscal year.

Lapse of  
special  
warrants

(4) When the Auditor has refused to certify that a cheque may issue, the minister of the department requisitioning the cheque may upon notice to the Auditor refer the matter to the Treasury Board and thereupon the correspondence in the case together with a memorandum stating,

Reference  
to Treasury  
Board

- (a) the legislative authority under which it is considered the expenditure may be made;
- (b) the objections taken by the Auditor; and
- (c) the answer to the objections,

shall be submitted by the minister in charge of the department to the Treasury Board and the Board may in its discretion order the issue of the cheque. R.S.O. 1960, c. 27, s. 11, *amended*.

**12.**—(1) The certificate or order of the Minister of Justice and Attorney General or Deputy Minister of Justice and Deputy Attorney General that a sum of money is required to be paid out of the Consolidated Revenue Fund on account of the investigation, detection or punishment of any offence against the laws of Ontario or of Canada, or on account of special services or disbursements in connection with inquests, or any purpose connected with the administration of justice in either civil or criminal matters, is sufficient authority for the issuing of a cheque by the Treasurer of Ontario for the amount named in the certificate or order, and the officer or other person to whom the cheque is issued shall account to the Minister of Justice and Attorney General for the proper disbursement of the amount received by such officer or other person.

Payment  
for special  
cases

(2) The certificate of the Minister of Justice and Attorney General or Deputy Minister of Justice and Deputy Attorney General that any moneys received by any officer or other person under this section have been duly accounted for is final and conclusive and the account is not subject to any further examination. R.S.O. 1960, c. 27, s. 12, *amended*.

Certificate  
that moneys  
accounted  
for

**13.** Every cheque issued by the Treasurer of Ontario shall be countersigned by the Auditor. R.S.O. 1960, c. 27, s. 13.

Counter-  
signing  
cheques





MR. CHAIRMAN, BEFORE PROCEEDING WITH THE SPECIFICS OF COMPLAINT #81, I WOULD LIKE TO STATE TO THE COMMITTEE MY UNDERSTANDING OF WHY I AM HERE TODAY AND TO RELATE IT TO THE APPROACH I HAVE TAKEN IN PREPARING FOR THIS HEARING.

FOR REASONS, WHICH I HOPE WILL BECOME APPARENT TO THE COMMITTEE IN THE COURSE OF MY REVIEW OF THIS CASE, WE DID NOT CONSIDER THE COMPLAINT OUTLINED BY THE OMBUDSMAN TO INVOLVE ANY MAJOR ISSUE AND WE THOUGHT OUR EXPLANATION OF OUR POSITION REASONABLE. THE CONCLUSION OF THE OMBUDSMAN THAT OUR LEGISLATION WAS "OPPRESSIVE" AND THE REVIEW OF THE CASE IN MORE DETAIL BY THIS COMMITTEE, COUPLED WITH YOUR REQUEST THAT I ATTEND TODAY SUGGESTED TO ME THAT MORE THAN A SIMPLE EXPLANATION OF THE MINISTRY'S POSITION IS REQUIRED.

IT IS MY UNDERSTANDING THAT THIS COMMITTEE IS INTERESTED IN THE PROCESS BY WHICH THE OMBUDSMAN'S OFFICE AND A MINISTRY DEAL WITH A PROBLEM AND WITH THE MINISTRY'S PERCEPTION OF THIS PROCESS. I, THEREFORE, APPROACHED THE PREPARATION OF MY COMMENTS WITH A VIEW TO PLACING BEFORE THE COMMITTEE FOR ITS CONSIDERATION NOT ONLY THE FACTS OF THE CASE AND HOW WE DEALT WITH THEM, BUT ALSO THOSE ISSUES ARISING OUT OF THE CASE WHICH I BELIEVE WILL ASSIST THIS COMMITTEE IN ITS EVALUATION OF THE REPORT OF THE OMBUDSMAN.

I WISH TO EMPHASIZE, MR. CHAIRMAN, THAT ALTHOUGH MY COMMENTS ON SOME POINTS MAY BE SOMEWHAT CONTENTIOUS, THEY ARE MADE IN AN EFFORT TO BE CONSTRUCTIVE AND THEY SHOULD NOT BE INTERPRETED AS A CRITICISM OF THE OMBUDSMAN'S OFFICE NOR AS AN INDICATION OF ANY BASIC ILL-WILL BETWEEN US. NOTWITHSTANDING THE HIGH PROFILE GIVEN TO ISSUES ARISING OUT OF THE NORTH PICKERING MATTER, I SINCERELY BELIEVE AND TRUST THE OMBUDSMAN AND HIS STAFF WILL BE ABLE TO AGREE, THAT OUR DAY-TO-DAY RELATIONSHIPS ARE CONDUCTED IN A SPIRIT OF CO-OPERATION AND GOODWILL. FROM TIME TO TIME WE DIFFER ON MATTERS OF JURISDICTION OR INTERPRETATION, BUT THIS DOES NOT PREVENT US FROM DEALING WITH THE MATTERS BROUGHT BEFORE US. IT IS FREQUENTLY IN THE MINISTRY'S BEST INTEREST TO RESOLVE AN ISSUE EXPEDITIOUSLY EVEN WHERE WE ARE OF THE OPINION THAT THE OMBUDSMAN MAY NOT HAVE JURISDICTION. I WILL HAVE MORE TO SAY ABOUT THIS LATER.

MR. CHAIRMAN, I WOULD NOW LIKE TO OUTLINE THE ONTARIO HOME RENEWAL PROGRAM IN GENERAL TERMS, THEN DEAL WITH THE FACTS OF THE COMPLAINT AS THEY RELATE TO THE PROGRAM AND FINALLY, I WOULD LIKE TO COMMENT ON THE OMBUDSMAN'S REPORT ON THIS CASE.

THE ONTARIO HOME RENEWAL PROGRAM WAS INTRODUCED IN THE FALL OF 1974 AS ONE OF THE MINISTRY OF HOUSING'S PROGRAMS TO PROVIDE AFFORDABLE ADEQUATE HOUSING IN ONTARIO. IT WAS RECOGNIZED THAT NEW HOUSING ALONE CANNOT MEET ALL THE HOUSING NEEDS IN THE PROVINCE AND THAT, AS WELL AS NEW HOUSING, THERE WAS NEED FOR A SET OF PROGRAMS DESIGNED TO CONSERVE AND IMPROVE EXISTING HOUSING STOCK.

THE PURPOSE OF THE PROGRAM IS STATED IN THE GUIDE TO THE PROGRAM PUT OUT BY THE MINISTRY IN THE FOLLOWING TERMS:

"OHRP PROVIDES GRANTS FOR MUNICIPALITIES TO ASSIST OWNER OCCUPANTS TO REPAIR THEIR HOMES TO STANDARDS DEVELOPED LOCALLY AND ACCEPTABLE TO THE MINISTRY. IT IS PARTICULARLY DIRECTED TO THE REHABILITATION OF SUBSTANDARD DWELLINGS, WITH EMPHASIS ON FAULTY STRUCTURAL AND SANITARY CONDITIONS, AND THE UPGRADING OF PLUMBING, HEATING AND ELECTRICAL SYSTEMS AND THE PROVISION OF ADEQUATE INSULATION. IT IS THE INTENT OF OHRP TO EXTEND THE LIFE OF THE HOME A MINIMUM OF 15 YEARS."

THE PROGRAM WAS FUNDED BY PROVINCIAL GRANTS MADE TO PARTICIPATING MUNICIPALITIES, THE AMOUNTS OF THE GRANTS VARYING AMONG MUNICIPALITIES IN ACCORDANCE WITH A FORMULA SET OUT IN THE REGULATIONS. ALTHOUGH THE PROGRAM WAS AVAILABLE TO ALL MUNICIPALITIES AND ALTHOUGH THE MINISTRY ENCOURAGED THE MUNICIPALITIES TO PARTICIPATE, THE DECISION TO TAKE PART IN THE PROGRAM WAS LEFT UP TO THE MUNICIPALITIES. TO DATE 539 OUT OF 796 MUNICIPALITIES HAVE RECEIVED GRANTS UNDER THE PROGRAM.

THE BASIC GENERAL TERMS FOR ASSISTANCE UNDER THE PROGRAM WERE SET OUT BY REGULATION IN SEPTEMBER 1974 AND ALTHOUGH THERE HAVE BEEN AMENDMENTS THE FOLLOWING PROVISIONS HAVE APPLIED THROUGHOUT THE PROGRAM:

"IT IS A CONDITION ATTACHING TO ALL GRANTS MADE BY THE MINISTER UNDER THIS REGULATION TO A MUNICIPALITY THAT THE MONEYS ... BE USED BY THE MUNICIPALITY ONLY, TO MAKE LOANS, NOT EXCEEDING \$7,500 ... TO OWNERS ... RESIDING WITHIN THE MUNICIPALITY AND QUALIFYING FOR A LOAN UNDER THIS REGULATION TO ASSIST IN THE REPAIR, REHABILITATION AND IMPROVEMENT OF REAL PROPERTY USED FOR RESIDENTIAL PURPOSES, WHICH PROPERTY IS OCCUPIED BY THE OWNER THEREOF.

THE REGULATIONS RESTRICT APPLICATION TO OWNERS WHOSE ADJUSTED FAMILY INCOMES DO NOT EXCEED \$12,500.

THE DEFINITION OF "OWNER" REQUIRES THE PERSON TO BE AN OCCUPANT OF THE DWELLING UNIT OWNED.

"DWELLING UNIT" IS DEFINED AS MEANING A SELF CONTAINED UNIT OCCUPIED AS A PRINCIPAL RESIDENCE BY A FAMILY."

IN SETTING UP THE PROGRAM WE WERE AWARE OF THE FOLLOWING AREAS OF POTENTIAL DIFFICULTY.

1. WE DO NOT HAVE THE STAFF TO ADMINISTER THE PROGRAM LOCALLY AND IN ANY EVENT WE WISHED TO HAVE THIS PROGRAM ADMINISTERED BY THE MUNICIPALITIES, BY PEOPLE CLOSER TO THE NEEDS OF THE PERSONS WHO QUALIFIED UNDER THE PROGRAM. THE DECISION TO HAVE LOCAL ADMINISTRATION OF THE PROGRAM CREATED THE RISK OF UNEVEN TREATMENT OF SIMILAR CASES ARISING IN DIFFERENT MUNICIPALITIES.
2. THE POTENTIAL DEMAND FOR GRANTS COULD EASILY EXCEED THE AMOUNT OF MONEY AVAILABLE FOR THE PROGRAM. THE LIMITATION ON FUNDS HAS MEANT THAT NOT ALL THE MUNICIPALITIES APPLYING IN ONE YEAR RECEIVE THE MONEY THEY REQUEST AND THAT WITHIN A MUNICIPALITY NOT ALL THE ELIGIBLE APPLICANTS FOR ASSISTANCE CAN BE FINANCED BY THE MUNICIPALITY.
3. WITHIN GENERAL GUIDELINES, THE LOCAL ADMINISTRATION WAS ALLOWED TO DETERMINE WHICH OF THE APPLICANTS WOULD RECEIVE ASSISTANCE UNDER THE PROGRAM. ALSO WITHIN GENERAL GUIDELINES, THE AMOUNT AND NATURE OF THE ASSISTANCE, THAT IS TO SAY THE TOTAL DOLLAR VALUE OF THE ASSISTANCE, THE AMOUNT THAT COULD BE FORGIVEN, AND THE AMOUNT THAT WOULD BE REPAYABLE, IS DETERMINED BY THE MUNICIPALITIES.



AS A RESULT OF THIS DISCRETION, PRACTICES IN DIFFERENT MUNICIPALITIES HAVE VARIED CONSIDERABLY. FOR EXAMPLE SOME MUNICIPALITIES HAVE NOT MADE ANY FORGIVEABLE LOANS, OTHERS HAVE SET THE MAXIMUM AMOUNT OF THE LOAN SUBSTANTIALLY BELOW THE PERMITTED MAXIMUM.

SINCE THIS WAS A NEW PROGRAM WE REALIZED THAT THERE MIGHT BE DIFFICULTIES WITH IT AND WE WERE UNCERTAIN AS TO HOW IT WOULD BE RECEIVED BY THE MUNICIPALITIES. THE PROGRAM WAS ESTABLISHED INITIALLY FOR A THREE YEAR PERIOD ENDING MARCH 31, 1977. DURING THIS PERIOD AN EXTENSIVE REVIEW OF THE PROGRAM WAS CARRIED OUT BY CONSULTANTS RETAINED BY THE MINISTRY AND WE RECEIVED THE REPORT IN DRAFT FORM IN LATE 1976. THE REPORT DID CONFIRM OUR GENERAL IMPRESSION THAT OHRP WAS WORKING WELL AND THE PROGRAM WAS EXTENDED UNTIL MARCH 31, 1978. THE CONSULTANTS HAVE DRAWN ATTENTION TO A NUMBER OF PRACTICES THAT HAVE DEVELOPED AND HAVE MADE RECOMMENDATIONS CONCERNING THEM. FOR THE PURPOSE OF THIS COMMITTEE, I DO NOT BELIEVE THAT IT IS NECESSARY TO GO INTO THE DETAIL OF THE REPORT. IF ANY MEMBERS ARE INTERESTED I WOULD BE PLEASED TO HAVE COPIES OF THE REPORT MADE AVAILABLE.

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WE BRIEFLY REVIEWED THE REPORT WITH THE PMLC AND IN APRIL 1977 IT WAS GIVEN WIDE DISTRIBUTION WITH THE REQUEST FOR COMMENTS. WE ARE NOW AT THE STAGE OF OUR REVIEW PROCESS WHERE WE HAVE TABULATED THE RESPONSES TO THE REPORT AND ARE ABOUT TO ASSESS THEM. ON THE BASIS OF THIS REVIEW WE WILL MAKE RECOMMENDATIONS FOR ANY PROGRAM CHANGE THAT IS CONSIDERED ADVISABLE IN THE 1978/79 PROGRAM.

MR. CHAIRMAN, I WOULD NOW LIKE TO TURN TO THE PARTICULARS OF COMPLAINT #81.

THE OMBUDSMAN'S LETTER OF DECEMBER 20, 1976 DESCRIBES THE BASIS OF THE COMPLAINT AS FOLLOWS:

1. THE COMPLAINANT LIVED IN A HOUSE ON THE SAME LOT UNTIL IT BURNED DOWN IN 1973. IT WAS THIS FIRE THAT MADE HER HOUSE UNINHABITABLE; IT HAD TO BE DEMOLISHED AND REMOVED FROM THE PROPERTY. THE COMPLAINANT HAD THE PRESENT HOUSE MOVED FROM ANOTHER LOCATION, SEVERAL MILES AWAY, ONTO THE SAME LOT TO REPLACE THE OTHER HOUSE.
2. THE MUNICIPALITY WILL NOT GRANT APPROVAL FOR THE COMPLAINANT TO HOOK UP WATER AND HYDRO SERVICES, THUS ENABLING HER TO OCCUPY THE HOUSE, UNTIL HER HOUSE IS PLACED ON A PROPER FOUNDATION. THE



HOUSE HAS NOT BEEN PLACED ON ITS FOUNDATION, APPARENTLY, BECAUSE OF A DISPUTE WITH A CONTRACTOR. A SECOND CONTRACTOR WAS HIRED BY THE COMPLAINANT TO DO THIS WORK. HOWEVER, IT APPEARS HE WOULD NOT PROCEED WITH THE WORK DUE TO THE DISPUTE AS TO THE OWNERSHIP OF THE PILINGS THE HOUSE PRESENTLY RESTS ON. THE COMPLAINANT CANNOT AFFORD TO PLACE THE HOUSE ON ITS FOUNDATION WITHOUT A LOAN OR GRANT UNDER THE HOME RENEWAL PROGRAM. BUT, SHE IS NOT DEEMED ELIGIBLE FOR THE ONTARIO HOME RENEWAL PROGRAM BECAUSE SHE DOES NOT MEET THE OCCUPANCY REQUIREMENT IN THE REGULATION.

RELATING THOSE EVENTS TO THE ONTARIO HOME RENEWAL PROGRAM, I WOULD MAKE THE FOLLOWING OBSERVATIONS:

1. THE DECISION AS TO WHETHER OR NOT THE COMPLAINANT QUALIFIED FOR A GRANT WAS MADE BY THE MUNICIPALITY. THE STAFF OF THE MINISTRY OF HOUSING DID NOT MAKE THE DECISION.
2. IT APPEARS THAT THE COMPLAINANT WAS NOT OCCUPYING THE DWELLING UNIT AND WAS THEREFORE NOT ELIGIBLE TO RECEIVE A GRANT.

3. EVEN IF THE COMPLAINANT WAS COMPLETELY ELIGIBLE FOR A GRANT, SHE HAS NO LEGAL RIGHT UNDER WHICH SHE CAN FORCE THE MUNICIPALITY TO MAKE A GRANT TO HER. IT WAS RECOGNIZED IN THE DESIGN OF THE PROGRAM THAT THE MUNICIPALITIES WOULD HAVE TO DETERMINE PRIORITIES AMONG APPLICANTS BOTH IN TERMS OF THEIR FINANCIAL NEED AND IN TERMS OF THE NATURE OF THE IMPROVEMENTS BEING CARRIED OUT.
4. ALTHOUGH IT IS STATED THAT THE COMPLAINANT'S APPLICATION WAS TURNED DOWN BECAUSE SHE WAS NOT AN OCCUPANT OF THE DWELLING UNIT, SHE MIGHT JUST AS EASILY HAVE BEEN TURNED DOWN ON THE GROUNDS THAT THE PROGRAM WAS DESIGNED TO REHABILITATE SUBSTANDARD HOUSING, NOT TO FINANCE THE COMPLETION OF PARTIALLY CONSTRUCTED HOMES OR THE MOVING OF STANDARD QUALITY HOMES FROM ONE SITE TO ANOTHER. THESE MAY BE VERY LEGITIMATE AREAS IN WHICH FINANCIAL ASSISTANCE MAY BE REQUIRED BUT THEY WERE NOT THE TARGET AREAS OF OHRP.

MR. CHAIRMAN, IF I MAY NOW TURN TO THE OMBUDSMAN'S REPORT ON THIS COMPLAINT, I WOULD LIKE TO OUTLINE SOME OF THE PROBLEMS A CASE SUCH AS THIS CREATES FOR THE MINISTRY.

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AS I MENTIONED IN MY OPENING COMMENTS, IN OUR EFFORTS TO BE CO-OPERATIVE AND EXPEDITIOUS WE CAN BECOME INVOLVED IN MATTERS WHERE THE OMBUDSMAN'S JURISDICTION MAY BE QUESTIONABLE. I BELIEVE COMPLAINT #81 IS ONE SUCH EXAMPLE.

THIS COMPLAINT WAS CONSIDERED BY STAFF TO BE RELATIVELY STRAIGHTFORWARD, ONE WHICH WOULD BE RESOLVED QUICKLY ON THE FACTS AND THEREFORE NO EXTENSIVE REVIEW OF THE QUESTION OF JURISDICTION WAS MADE AT THE TIME OF THE OMBUDSMAN'S ORIGINAL INQUIRY OF FEBRUARY 26, 1976. ALTHOUGH THERE WAS CONSIDERABLE ORAL DISCUSSION OF THE CASE WITH THE OMBUDSMAN'S STAFF INCLUDING THE QUESTION OF JURISDICTION, THE INVESTIGATION WAS CONDUCTED WITHOUT ANY APPARENT NEED TO EXCHANGE CORRESPONDENCE. THE SECOND WRITTEN DOCUMENT WAS THE OMBUDSMAN'S REPORT TO THE MINISTER OF JULY 28, 1976.

IN RAISING THE ISSUE OF JURISDICTION AT THIS TIME, I DO SO NOT IN ANY ATTEMPT TO EMBARRASS THE OMBUDSMAN BUT RATHER TO ILLUSTRATE THE HAZARD OF EXPEDITIOUS CO-OPERATION AND AS PREVIOUSLY STATED, TO ASSIST THE COMMITTEE IN ITS CONSIDERATION OF THIS CASE. IN ORDER TO AVOID SURPRISING THE OMBUDSMAN, I FORWARDED TO HIM LAST WEEK A COPY OF THESE COMMENTS.

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WHILE THE QUESTION OF JURISDICTION MAY BE ACADEMIC WHERE THE MINISTRY AND THE OMBUDSMAN AGREE ON A COMPLAINT, IT IS AN ENTIRELY DIFFERENT MATTER WHEN A REPORT IS BEFORE THIS COMMITTEE. I WOULD RESPECTFULLY SUGGEST THAT THIS COMMITTEE HAS NO JURISDICTION IN THIS CASE IF, BECAUSE OF HIS LACK OF JURISDICTION, THE OMBUDSMAN'S REPORT IS A NULLITY.

IF I AM CORRECT ABOUT THE QUESTION OF JURISDICTION THEN IT FOLLOWS THAT THE OMBUDSMAN SHOULD NOT HAVE REPORTED ON THIS CASE. NOR SHOULD HE REPORT ON SIMILAR COMPLAINTS ABOUT THE MUNICIPAL ADMINISTRATION OF OHRP. SIMILARLY THIS COMMITTEE SHOULD NOT BE CONSIDERING THE MUNICIPAL ADMINISTRATION OF OHRP.

MR. CHAIRMAN, THE FOLLOWING IS THE BASIS OF MY CONCERN OVER THE QUESTION OF JURISDICTION. THE OMBUDSMAN'S FUNCTION UNDER SECTION 15 OF HIS ACT IS "TO INVESTIGATE ANY DECISION OR RECOMMENDATION MADE OR ANY ACT DONE OR OMITTED IN THE COURSE OF THE ADMINISTRATION OF A GOVERNMENTAL ORGANIZATION." I DO NOT INTERPRET THAT SECTION TO BRING UNDER THE JURISDICTION OF THE OMBUDSMAN, THE DECISIONS OF A MUNICIPAL OFFICIAL ACTING PURSUANT TO REGULATIONS WHICH ARE DRAFTED, RECOMMENDED OR BROUGHT FORWARD BY A GOVERNMENT ORGANIZATION.

NOR IN MY RESPECTFUL OPINION DOES THE FACT THAT A GOVERNMENTAL ORGANIZATION ASSISTS THE MUNICIPAL OFFICIALS BY PROVIDING OFFICE CONSOLIDATIONS OF THE REGULATIONS AND ADVICE ON THEIR INTERPRETATION, CREATE ANY JURISDICTION UNLESS IT IS THAT ADVICE AND ASSISTANCE THAT IS THE SUBJECT MATTER OF THE COMPLAINT. IN THIS CASE, THE DECISION COMPLAINED OF IS THE DECISION OF A MUNICIPAL OFFICIAL. SO FAR AS I AM AWARE, NO DECISION OR RECOMMENDATION MADE OR ACT DONE OR OMITTED IN THE COURSE OF THE ADMINISTRATION OF THE MINISTRY OF HOUSING HAS BEEN PUT IN QUESTION OR ISSUE BY THE COMPLAINANT; OR BY ANY OF THE FINDINGS OF THE OMBUDSMAN, UNLESS ONE INTERPRETS SECTION 15 TO INCLUDE THE VERY PROCESS BY WHICH PROGRAMS ARE DESIGNED AND LEGISLATION BROUGHT FORWARD. AS I HAVE ALREADY STATED I DO NOT BELIEVE THIS TO BE A REASONABLE INTERPRETATION OF THE SECTION.

FINALLY, ON THIS POINT I DO NOT BELIEVE THE OMBUDSMAN CAN OR SHOULD BE ALLOWED TO CREATE JURISDICTION IN A MUNICIPAL AREA BY REFERRING A COMPLAINT OVER WHICH HE HAS NO JURISDICTION TO A MINISTRY AND THEN PURSUING THAT MINISTRY'S FAILURE TO ACT ON THE COMPLAINT OR ON HIS RECOMMENDATIONS IN RESPECT OF IT.



IF I AM WRONG ABOUT THE QUESTION OF JURISDICTION, THEN I ASK THE COMMITTEE TO CONSIDER THE FOLLOWING COMMENTS ON THE FINDINGS OF THE OMBUDSMAN REPORT TO THE MINISTER ON COMPLAINT #81. THE REPORT CONTAINED IN THE OMBUDSMAN'S LETTER TO THE MINISTER OF HOUSING DATED JULY 28, 1976 CONCLUDES THAT THE FACT THAT THE COMPLAINANT CANNOT QUALIFY UNDER THE REGULATION "IS OPPRESSIVE IN ITS RESULT". I FULLY APPRECIATE THAT SECTION 22 OF THE OMBUDSMAN ACT SPEAKS IN TERMS OF THE OMBUDSMAN'S OPINION AS TO WHAT IS OPPRESSIVE. HOWEVER, IN VIEW OF THE ORDINARY DICTIONARY MEANING OF "OPPRESSIVE" WHICH IS "UNREASONABLY BURDENSOME OR SEVERE". AS IN "OPPRESSIVE LEGISLATION", I MUST EXPRESS MY RESPECTFUL DISAGREEMENT WITH THIS OPINION. THE LEGISLATION PLACES NO BURDEN ON THE COMPLAINANT AT ALL. THE CRITICISM OF IT IS THAT IT FAILS TO CONFER A BENEFIT UPON HER. THE FACT THAT SHE, AMONG MANY OTHERS WHO DO NOT QUALIFY UNDER OHRP, CANNOT OBTAIN FINANCIAL ASSISTANCE FOR A PARTICULAR HOME IMPROVEMENT PROJECT MAY BE UNFORTUNATE OR REGRETTABLE BUT I SUGGEST TO YOU IT IS NOT OPPRESSIVE. IF THE WORD "OPPRESSIVE" HAS TO BE USED TO BRING THIS MATTER WITHIN SECTION 22 THEN I WOULD RESPECTFULLY SUGGEST TO THIS COMMITTEE THAT YOU MUST DECIDE WHETHER THE OMBUDSMAN'S TERMS OF REFERENCE ARE TOO RESTRICTIVE, OR WHETHER IT IS INTENDED THAT THE PROPER FUNCTION OF HIS OFFICE IS TO DEAL WITH MATTERS OF A TRULY OPPRESSIVE NATURE AND NOT WITH MATTERS THAT ARE OF SOME LESSER DEGREE OR CONCERN.

MR. CHAIRMAN, IN MAKING THESE RESPECTFUL SUBMISSIONS I WISH TO EMPHASIZE THAT I DO SO IN ORDER TO OBTAIN CLARIFICATION OF THE DUTIES AND POWERS OF THE OMBUDSMAN AND OF THE RESPECTIVE DUTIES AND OBLIGATIONS THAT I AND ALL OTHER EMPLOYEES IN THE MINISTRY OF HOUSING HAVE TO THE OMBUDSMAN. WHILE I AM MOST WILLING TO ASSIST THE OMBUDSMAN'S OFFICE IN EVERY WAY POSSIBLE THE MINISTRY SIMPLY CANNOT IN OUR PRESENT CONDITION OF CONSTRAINED FINANCIAL AND HUMAN RESOURCES, AFFORD TO HAVE STAFF EXTENSIVELY INVOLVED IN MATTERS THAT ARE NOT PROPERLY THE SUBJECT OF INVESTIGATION.

MR. CHAIRMAN, I WOULD NOW LIKE TO DEAL WITH THE FURTHER RECOMMENDATIONS OF THE OMBUDSMAN IN HIS LETTER DATED DECEMBER 20, 1976 TO THE MINISTER OF HOUSING.

HIS FIRST RECOMMENDATION IS THAT THE REGULATIONS BE AMENDED TO PERMIT THE MINISTER "TO WAIVE THE STRICT COMPLIANCE OF A REQUIREMENT OF THE REGULATION, IN CERTAIN EXTRAORDINARY CIRCUMSTANCES, BUT ONLY UPON THE APPLICATION BY AN OWNER TO THE MINISTER FOR SUCH RELIEF."



IN THE MINISTRY'S VIEW, THIS APPEAL PROCESS WOULD CREATE AN UNWARRANTED ADDITION TO THE BUREAUCRACY. WE HAVE TRIED TO KEEP OHRP SIMPLE, EFFICIENT AND LOCALLY ADMINISTERED. WE DO NOT HAVE THE STAFF TO CARRY OUT THE INVESTIGATIONS NECESSARY TO ENABLE THE MINISTER TO MAKE AN INFORMED DECISION NOR DO WE WISH TO ACT AS AN APPEAL TRIBUNAL. WE BELIEVE THE MUNICIPALITIES CAN PROPERLY RUN THE PROGRAM WITHIN THE GUIDELINES OF THE REGULATIONS.

AS AN ALTERNATIVE TO THE MINISTER ACTING AS AN APPEAL OFFICER, THE OMBUDSMAN RECOMMENDED THAT THE REGULATIONS BE AMENDED TO PROVIDE THE MUNICIPALITIES WITH SUCH DISCRETION.

IT IS THE MINISTRY'S POSITION THAT IT IS NOT NECESSARY TO GRANT SUCH A BROAD DISCRETION IN ORDER TO DEAL WITH A SINGLE AND VERY SPECIFIC COMPLAINT.

THE ISSUE IS WHETHER OCCUPANCY SHOULD BE A TEST FOR ELIGIBILITY UNDER THIS PROGRAM. AS PREVIOUSLY STATED, WE ARE IN THE PROCESS OF REVIEWING THIS PROGRAM AND IT IS OUR INTENTION TO CAREFULLY REVIEW THIS PARTICULAR ISSUE. I MIGHT SAY MR. CHAIRMAN, THAT AS A RESULT OF OUR RECENT DISCUSSIONS OF THE IMPORTANCE OF "OCCUPANCY" AS A TEST OF ELIGIBILITY,

I FOR ONE FIND CONSIDERABLE MERIT IN EXTENDING THE PROGRAM TO THOSE CASES WHERE THE IMPROVEMENTS TO THE HOUSE WILL ENABLE THE OWNER TO TAKE UP OCCUPANCY IN AN OTHERWISE UNINHABITABLE DWELLING UNIT. I TEND TO THIS VIEW, MR. CHAIRMAN, NOT BECAUSE I SEE THE LEGISLATION AS BEING OPPRESSIVE, WHICH I DON'T, BUT BECAUSE I BELIEVE THE BASIC OBJECTIVE OF THE PROGRAM CAN BE BETTER SERVED IN SOME CASES BY MAKING THIS CHANGE.

FINALLY, MR. CHAIRMAN, I WISH TO COMMENT ON THE OMBUDSMAN'S RECOMMENDATION THAT WHEN SUCH AN AMENDMENT IS MADE TO THE REGULATIONS, AS HE HAD PREVIOUSLY RECOMMENDED, THE DISCRETION BE EXERCISED IN THE COMPLAINANT'S FAVOUR. I HAVE CONSIDERABLE DIFFICULTY WITH THIS RECOMMENDATION. AS I INDICATED EARLIER, THE MUNICIPAL OFFICIAL MAY HAVE USED THE LACK OF OCCUPANCY AS AN EASY BASIS FOR TURNING THE APPLICATION DOWN. IF THE MUNICIPALITY WERE FREE TO EXERCISE AN UNFETTERED DISCRETION THE CONCLUSION MIGHT BE THAT THE COMPLAINANT'S IMPROVEMENTS DO NOT RELATE TO A SUBSTANDARD DWELLING UNIT, OR THAT THERE ARE MORE NEEDY APPLICANTS WHO SHOULD RECEIVE THE MONEY, AND SHE WOULD STILL BE REFUSED A LOAN. I DO NOT BELIEVE THAT THE OUTCOME CAN BE PREDICTED NOR SHOULD IT BE PRESCRIBED.

TO SUM UP, MR. CHAIRMAN, WE IN THE MINISTRY OF HOUSING WISH TO CO-OPERATE WITH THE UMBUDSMAN'S OFFICE TO THE GREATEST EXTENT POSSIBLE. HOWEVER, BOTH SIDES NEED A CLEARER DELINEATION OF JURISDICTION AND RULES OF THE GAME IF WE ARE TO FUNCTION PROPERLY. I HAVE RAISED THE QUESTION OF JURISDICTION AS IT AFFECTS THIS CASE AND THE QUESTION OF LANGUAGE AS IT RELATES TO THE ASSESSMENT OF LEGISLATION. THESE QUESTIONS GO FAR BEYOND THIS CASE, WHICH IS THE REASON I HAVE RAISED THEM, BUT IF YOUR CONSIDERATION OF THEM MUST BE CONFINED TO THE PARTICULARS OF THIS CASE, THE RESULTS MAY STILL BE OF CONSIDERABLE ASSISTANCE TO THE MINISTRY.

ON THE SPECIFIC ISSUE OF COMPLAINT #81, WE ARE REVIEWING THE CRITERIA FOR OHRP BUT WE CANNOT GIVE ANY ASSURANCE, EVEN IF WE ELIMINATE THE CRITERION OF OCCUPANCY, THAT THE COMPLAINANT'S SPECIFIC NEED WILL BE MET.

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